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Note by the Secretary-General

1. The attached document contains the third report of the United Nations Observer Mission in El Salvador (ONUSAL) and consists of the report of the Director of the Mission's Human Rights Division for November and December 1991.

2. It should be recalled that, from the time when ONUSAL was established until the signing of the Peace Agreement on 16 January 1992, the Human Rights Division was the only component of ONUSAL that was functioning fully. Pursuant to Security Council resolution 729 (1992), ONUSAL now also has a Military Division and a Police Division. A subsequent report will cover functions related to these aspects of the Mission's mandate.

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ANNEX

Report of the Director of the Human Rights Division

## I. INTRODUCTION

1. The two main events since the Division's previous report (A/46/658-S/23222 and Corr.1) have been the signing of the Peace Agreement on 16 January and the entry into force of the cessation of the armed conflict on 1 February (see A/46/864-S/23501, annex). Both events radically transform the context in which the ONUSAL Human Rights Division is operating. On the one hand, the Division will finally be able to perform its task within the framework originally conceived by the San José Agreement. On the other, it will have to coordinate its activities with the Mission's new divisions, the Police and Military Divisions.

2. Although the cessation of the armed conflict went into effect on 1 February, both the unilateral cease-fire declaration by FMLN on 16 November 1991 and the signing of the New York Act on 31 December 1991 helped to substantially reduce the level of military activities in the country and their adverse effects on the civilian population. It is to be hoped that a whole series of acts and situations which violate human rights and are related to the armed conflict will now rapidly disappear. Indeed, there are already clear signs of a significant decline in such problems as recruitment, restrictions on freedom of movement, harm done to the civilian population in the course of the armed conflict and, in general, violations of international humanitarian law by both parties. It will be some time before certain other problems, such as the lack of personal documentation of large sectors of the population, are finally solved, but the end of the conflict removes the political impediments to their solution.

3. Hopefully, the changes agreed to at the negotiating table concerning the armed forces, public security and the military structure of FMLN, and also the expansion of the Mission's mandate and the increase in its police and military observers, will likewise help to improve the human rights situation in the country substantially. However, the transitional period now beginning is fraught with uncertainty and may see attempts at destabilization and, possibly, an increase in certain practices which, like summary executions by paramilitary groups, still seem alarmingly prevalent. There have also been further cases of death threats, many of them coming, by all indications, from organized groups, to which the competent State organs have yet to respond effectively. This will require the Human Rights Division to redouble its efforts in order to help ensure that the agreements reached translate into practices and conducts that respect human rights, that all practices and conducts that might violate human rights are eradicated and that the institutions responsible for protecting and guaranteeing citizens' rights fulfil their task.

4. During the period covered by this report, the Human Rights Division continued to carry out all the activities begun on 1 October and described in detail in paragraphs 4-7 of its previous report. The Division's contacts with the parties are now operating smoothly and its exchanges with them are frank. Contacts with the Government of El Salvador and with its political, military, judicial and municipal authorities were strengthened at both the regional and the national level during the reporting period. In the latter connection, mention should be made of the valuable coordination mechanism provided by the inter-agency group coordinated by the Executive Secretary of the governmental Human Rights Commission. Contacts with FMLN have also increased, especially at the local level, having been greatly facilitated first by the reduction and then by the total suspension of military activities. In addition to these contacts, meetings outside the country with the FMLN Political and Diplomatic Commission have continued. Such meetings will henceforth take place within the country. Links between the Division, its regional offices and suboffices and civilian society, as represented by trade union, social and political organizations and organizations for the promotion and protection of human rights, have also increased.

5. As on earlier occasions, various political and social sectors have understandably insisted on requesting the Division to perform functions not entrusted to it under the San José Agreement. Such requests have forced the Division to continue to define its role more precisely. Three types of situations have prompted further requests for action by the Division: land seizures, the levying of the so-called war tax and labour disputes. On the first of these, the Division has maintained that it has no mandate to give an opinion on agrarian disputes or to prevent land seizures or evictions. However, it has made it clear that, where land problems are concerned, it will verify that the rights to life, security and integrity of person, personal liberty and due process, to which the San José Agreement attaches priority, are not being violated. The Division has, nevertheless, acting through its regional coordinators and under the direction of the Chief of Mission, used its good offices to help find negotiated solutions to problems that may arise at the local level between the lawful owners and the occupants of land. On the levying of the so-called war tax, the Division has stated that this is either an activity related to the armed conflict or, when not carried out by FMLN, simply a criminal activity. Neither of these is covered by the Mission's mandate. However, ONUSAL has reiterated that it will verify whether, in the course of such activities, human rights to which the San José Agreement gives priority are being violated. The Mission has taken a similar position on labour disputes, stating that while it is not competent to give an opinion on their substance, it will verify that, in the settlement of such disputes, established procedures are observed and priority human rights, particularly freedom of association, are not violated.

## II. CASES RELATING TO HUMAN RIGHTS

### A. Right to life and to integrity and security of person

#### 1. Summary executions or deaths in violation of juridical guarantees

6. No. ORSA/192: Juan Pablo Arévalo Ordoñez, age 43, residing in the Department of Santa Ana. According to the complaint, at around midnight on 17 November 1991, individuals armed with pistols came to the victim's home and demanded to see him. When Arévalo came out to the courtyard of his building, they pointed their guns at him and took him away to an unknown destination. This was done in the presence of his wife and two children, who were ordered to keep quiet or they would be killed. Two days later, the Metapán Treasury Police reported having found Arévalo's body. The autopsy indicated that the direct cause of death was "a gunshot wound in the thorax". It also notes that the body had gunshot wounds in the frontal region. The Metapán Court of First Instance is handling the case. According to the dossier, someone gave information about the identity of the alleged perpetrators. ONUSAL was informed that the killers were two civilians, neighbours of the victim, who had earlier threatened to kill him. As of the writing of this report, the judge had still to order any significant action in the case and the district attorney's office had not brought proceedings. The witnesses had not appeared in court either.

7. No. ORSA/282: Mario Alberto Livorio, age 25, José Ismael López, age 16, and Oscar Ernesto Linares Valencia, age 16, residing in the Department of Ahuachapán. On 14 November 1991, civil defence forces from Candelaria de la Frontera came across the bodies of three young men. ONUSAL was able to verify that the three bodies had bullet and knife wounds. The traces of blows to the chest were visible on one of them. Death could have occurred approximately 48 hours before the inspection made by the Mission's observers. ONUSAL contacted the judge of the Second Criminal Court of Santa Ana, who ordered the bodies transferred to the city's forensic institute, where autopsies were performed the same day. The relatives of the victims examined the dead men and identified them in court. They also said that the young men had set out from their homes together on 12 November to harvest coffee on an estate and that they had no information about why they had been killed or by whom.

8. Given the seriousness of the crime, ONUSAL feels that assistance could have been sought from the Criminal Investigation Commission, which has the necessary laboratories and staff which are not available in the area. The autopsies were also far from adequate: none of the autopsy reports gave the victims' names and they were far from accurate in calculating their age and the date of death. On 6 January 1992, the Mission was able to confirm that, since 25 November when the case was referred to him, the judge currently in charge of the pre-trial proceedings had not ordered any action and no representative of the Public Prosecutor's Office had brought proceedings. On 15 January, the Treasury Police instructed a detective to continue investigating the case.

9. No. ORSA/197: Juan Bautista Aguilar Alvarado, age 23, residing in the Department of Santa Ana. According to the complainants, at around 8 p.m. on 3 November 1991, Aguilar was shot dead by a number of civilians half a block from his home. The court, assisted by two forensic doctors, examined the body but did not perform an autopsy. The body had four gunshot wounds. The complainants informed the Metapán Treasury Police, but the latter did not come to the scene of the crime to start the necessary investigations. According to a statement made to ONUSAL, the perpetrators were members of a patrol or military escort from a neighbouring hamlet and a number of them had been identified. Their names were communicated to the Mission and appear in the judicial proceedings brought before the Metapán Court of First Instance. The perpetrators apparently acted with the complicity of the chief of the patrolmen of a nearby locality. The Mission learnt from a report it received that the Treasury Police transmitted the names of the persons allegedly involved in Aguilar's death to the court on 6 December 1991, but as of the writing of this report, neither the judiciary nor the district attorney's office were known to have taken any action.

10. Although they are civilians, patrolmen have an identity card issued by the Ministry of Defence and are authorized to carry small arms. At the national level, members both of the territorial service of military escorts and of the civil defence come under the authority of the commander of the territorial service of the Ministry of Defence. Their organization and functioning make them paramilitary bodies or groups which, under the Peace Agreement, are to be abolished (see A/46/864-S/23501, annex, chap. I, para. 10A). The Mission has found that it is widely believed that these groups, like the civil defence forces to be disbanded pursuant to the Peace Agreement, are usually guilty of abuse of authority and even encroach on the spheres of competence of other State organs, with potentially serious consequences for respect for and the protection of human rights.

11. The Mission also received a report that the Metapán local command has armed a group of individuals from that municipality who seem to be linked to a number of recent deaths in the area from other than natural causes. It is particularly worrisome, therefore, that both the judiciary and its auxiliary organs have taken a passive attitude when there is every reason to believe that paramilitary groups are linked to crimes and abuses of authority of this magnitude.

12. No. ORSV/334: Ana Yancy Alvarez, age 5, her sister Nilson Israel Alvarez, age 3, Vicente Renderos Zepeda, age 48, farmer, and his son Vicente Renderos Alvarez, age 3, residing in the Department of La Paz. According to a report by the Legal Protection Office of the Archdiocese of San Salvador (henceforth referred to as Legal Protection), at approximately 5 p.m. on 12 December 1991, three individuals drove up to the victims' home in an unmarked grey Volkswagen car with polarized windows. One of the individuals aimed a gun at Vicente Renderos and asked him to identify himself. When Alvarez replied, the individual opened fire. The bullets hit and killed Ana Yancy Alvarez and wounded Vicente Alvarez himself, his son

Vicente Renderos Alvarez and Ana's sister Nilson Israel Alvarez. When the shooting ended, the three individuals drove off, passing in front of the civil defence post which is 80 metres, in a straight line, from the scene of the crime.

13. The San Pedro Masahuat Court of First Instance instituted pre-trial proceedings after news of the incident appeared in the press; neither the civil defence nor the Treasury Police reported the crime to the court. The Treasury Police examined the little girl's body but did not perform an autopsy. The judge later order the body exhumed. Vicente Renderos Zepeda apparently identified two relatives as having instigated the shootings, although neither of them was summoned by the judge or by any auxiliary organs.

14. ONUSAL concluded that the shots must have been perfectly audible from the nearby civil defence post. The car in which the perpetrators were driving had been in the canton for most of the morning. A civil defence official admitted to having heard the shots, but could give no plausible explanation as to why the vehicle was not stopped as it left the scene. ONUSAL is not aware that any judicial or police action has been ordered to find the alleged perpetrators.

## 2. Death threats

15. Nos. ORSA/197 and 198: Pedro N. and Juan N. According to the complaint, armed civilians searched for the complainants at their residence after one of the complainant's relatives had been murdered. Having failed to find them, the armed civilians waited for them for a long time and then eventually left, but not before making explicit death threats. The complainants, fearing for their lives, decided to leave the locality altogether. Reports that a number of crimes committed in the area have gone unpunished show that their fears were justified. The complainants feel so unsafe that, although they say they have information identifying the individuals who made the threats, for fear of reprisals they have not communicated it to either the police or the courts.

16. No. SORC/92: Claudia Eugenia Márquez Mancia, age 21, residing in the Department of Chalatenango. According to the complaint, the complainant was threatened by members of the military detachment who, wearing civilian clothing, visited resettled communities in order to identify individuals who might have FMLN links. The last threat was communicated to her, indirectly, on 16 October 1991, when she was accused of being an FMLN member and informed that her life was being spared because she was the daughter of a military man.

17. ONUSAL transmitted the complaint to the military detachment's headquarters and received a reply in writing, announcing that three soldiers would be discharged. It was subsequently confirmed that such action had indeed been taken. The Mission views that disciplinary action as an indication that such incidents will cease.

18. No. SORC/85: El Calvario district, Department of Chalatenango. According to the complaint, a soldier from the military detachment kept going to the El Calvario district, where he threatened a number of residents, sometimes discharging his service firearm and displaying hand grenades, which he said he would throw at the local residents. The complaint was lodged by members of another community, since the residents of El Calvario district were too fearful of their aggressor to do so.

19. The military authorities stated in writing that the soldier in question would be punished for unauthorized use of his firearm. ONUSAL later received confirmation that the soldier had been disciplined, which is encouraging in that it indicates that the authorities do not intend to tolerate such abuses in the future.

20. No. ORSS/620: Juan José Huezo, age 30, General Secretary, National Federation of Salvadorian Workers' Unions (FENASTRAS). On 13 December 1991 the complainant received a letter at the Federation's headquarters containing threats against his physical safety and that of his family, signed by a group referring to itself as the "Salvadorian Anti-Communist Front", which is known to have committed similar acts of intimidation recently. Two days earlier, Huezo had participated as a FENASTRAS representative in a press conference on the Commission on the Truth, provided for in the Mexico Agreements between the Government of El Salvador and FMLN (A/46/553-S/23130, annex). Prior to the establishment of ONUSAL, in April 1991, the complainant and his wife had been the victims of an attempted abduction in the vicinity of the Federation's headquarters.

21. No. ORSS/804: Consejo Directivo del Consejo Nacional de Iglesias (CNI) (Executive Board of the National Council of Churches). On 7 January 1992 a letter containing death threats against the members of the Council was found at an Executive Board session held at the Episcopal Church of El Salvador. The letter, signed by the so-called Secret Army of National Salvation, accused the members of the Council of being members of the Salvadorian Communist Party and of having collaborated actively with FMLN through the churches and related bodies. Subsequently, a number of Council members, including the President of the Council, the Rev. Victoriano Jimeno, received death threats by telephone. On returning from the signing of the Peace Agreement, the Rev. Jimeno received a telephone call giving him 72 hours in which to leave the country. As a result, he is now outside El Salvador.

22. The Council was established on 23 August 1991, with the following clergy as its members: Victoriano Jimeno, Medardo Gómez, Hugo Magaña, Flora Carolina Fuentes, Carlos Nájera, Roberto Palacios, Julio César Grande, Ignacio Meza, Santiago Flores, Luis Serrano and Angel Ibarra. Its secretary, the Rev. José Roberto Palacios, was arrested by the National Guard on 19 November 1991 (case No. ORSS/514/91) and released following ONUSAL intervention. He was accused of being a bogus minister and collaborating in the recruitment of young people for FMLN.

23. On 30 November 1991, Pilar Serrano Rivas, a Christian Youth and Student Community outreach worker and the sister-in-law of Pastor Palacios, was the victim of an attempted abduction by individuals in a vehicle with polarized windows. The Rev. Palacios reported that while the National Guard was interrogating him, he was shown photographs of his sister-in-law and Council members in various locations (case No. ORSS/616).

24. On 3 January 1992, in Cojutepeque, the main city of the Department of Cuscatlán, the National Guard arrested the Rev. José Ignacio Meza, an Episcopalian minister (case No. ORSS/682/92), who was accused of being a bogus minister, possessing firearms and "subversive literature" and collaborating with FMLN. He was released six days later. On 12 January 1992, he was the target of threats in connection with a religious ceremony held in Cojutepeque that same day.

25. On 22 January, at 8 a.m., the wife of the Rev. Julio César Grande, a Council member, was forced into a vehicle with polarized windows in Ayutuxtepeque, Department of San Salvador. According to her complaint, during a 20-30 minute drive she was subjected to an interrogation, which continued once the vehicle had reached its destination. There, she was injected with a substance that may have been a drug, according to an ONUSAL doctor, that induced sleep for over 24 hours. She was released on 23 January at 7 p.m. in San Salvador.

26. ONUSAL interviewed the members of the Council several times. With regard to the threat made on 7 January 1992, ONUSAL suggested that a complaint should be lodged with the Office of the Attorney General of the Republic, which was done on 13 January. The Mission met with the Assistant Attorney General in order to find out what action would be taken to deal with the serious threats in question, and later also with the Criminal Investigation Commission, which had been entrusted by the Office of the Attorney General with investigating the matter. The Mission also met with the governmental Human Rights Commission. The complainants took the matter up with the Legislative Assembly and the Executive Secretary of the governmental Human Rights Commission, met with the Attorney General and requested a meeting with the President of the Republic and the Minister of Defence.

27. There may be a link between the death threats against the Council as a whole and a number of individual Council members and the arrest of the Rev. Ignacio Meza and the Rev. Roberto Palacios. The charges made, which are apparently entirely unfounded, are similar. There is also reason to believe that the so-called Secret Army of National Salvation is the same group as the above-mentioned Salvadorian Anti-Communist Front. The methods used are the same and the content of the letters received is very similar. This case is so serious that it calls for a special effort by the authorities to ensure that it is cleared up fully and expeditiously; many points could be elucidated by means of a thorough investigation.

### 3. The State's obligation to provide safeguards

28. One important task in the field of human rights is to specify the obligations of States. There are obligations to respect human rights, which imply peremptory abstentions by State organs, and obligations to safeguard or protect human rights, which take the form of what is known as the State's duty to provide safeguards. This is a duty to prevent illegal conduct and, where such conduct occurs, to investigate it, to bring to justice and punish the perpetrators, and to indemnify the victims.

29. State responsibility can arise not only from a lack of vigilance with regard to the prevention of harmful acts but also from a lack of diligence in prosecuting perpetrators and in applying the necessary civil penalties. 1/ Currently, the basis, as embodied in treaties, of the State's obligation to safeguard or protect human rights is provided by the International Covenant on Civil and Political Rights (art. 2, paras. 1 and 2) and the American Convention on Human Rights (art. 1, para. 1), in the case of States that have ratified those international instruments, as El Salvador has.

30. As stated by the Inter-American Court of Human Rights, the State's duty to provide safeguards entails the duty "to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights". 2/ Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. It is therefore important to consider to what extent the State's failure to fulfil the obligation to prevent is systematic. The duty to prevent implies that human rights violations must be considered and treated as illegal acts leading to the punishment of their perpetrators and the obligation to indemnify the victims. The same applies, mutatis mutandis, in the case of the obligation to investigate. Nevertheless, as stated by the Inter-American Court of Human Rights in the judgement quoted above, "it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective". 3/

31. Various United Nations organs have repeatedly established with disquiet that the Salvadorian judicial system is unable to determine the responsibility of the perpetrators of human rights violations. 4/ The Mission notes with concern that these serious flaws in the judicial system persist. Such deficiencies often involve non-compliance with the rules on criminal proceedings laid down in the Salvadorian Code of Criminal Procedure. Similarly, the failure of both the judicial system and the police to take action in respect of cases where unnatural deaths have occurred constitutes a failure to implement the recommendations to States adopted by the General Assembly in its resolution 44/162 of 15 December 1989. That resolution endorsed the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. 5/ According to the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. It is therefore essential

to identify and apprehend the person(s) involved in the death, and to bring the suspected perpetrator(s) before a competent court (Principles 9 and 18).

32. The action required, at a minimum, in an investigation is set out in the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions, published by the United Nations. A key aspect of an investigation of a summary execution is the collection and analysis of evidence. It is necessary to recover and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified. 6/ With respect to the cases dealt with in paragraphs 6 to 18 of this report, the Mission believes, in view of the deficiencies that came to light in the investigation of the incidents, that the State has so far failed to fulfil its duty to safeguard or protect the right to life.

## 4. Protection of threatened persons

33. One specific aspect of the obligation to provide safeguards concerns individuals who have received death threats. While attention must be paid to all death threats, it is clear that protection is especially necessary when such threats are made by organized groups, as seems to have occurred in several of the cases described above. The obligations of the State in this regard are set forth clearly in the norms adopted by the General Assembly, under which the State must guarantee "effective protection through judicial or other means (...) to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats" (principle 4).

34. Similarly, when public officials learn of threats or other attacks on integrity and security of person which constitute crimes or misdemeanours punishable under the Penal Code, they must bring them to the attention of the competent authority in order for legal proceedings to be brought, independently of any administrative disciplinary penalties to which their authors may be subject, where the latter are also public officials or military or civilian employees. 7/

35. In its previous report (paras. 36-38), ONUSAL drew attention to the seriousness of acts of intimidation, which must be interpreted as death threats that might materialize. On that occasion, the Mission observed that in all such cases effective measures by State agencies were needed to put an end to the activities of groups making such threats. Although the Mission was referring to a case which gained international notoriety and in which responsibility for the acts of intimidation was claimed by the self-styled Salvadorian Anti-Communist Front, the latter group still seems to be acting with complete impunity. This should be a source of concern for the authorities, which have an obligation to prevent such acts and to investigate and punish those responsible.

36. With regard to cases of death threats, the Mission is awaiting the necessary measures of protection for threatened individuals or groups and also an effective investigation, without which the State would be breaching its obligation to provide safeguards.

### 5. Torture and cruel, inhuman or degrading treatment or punishment

37. This section describes a series of cases in which acts that can be equated with torture or cruel, inhuman or degrading treatment or punishment were reported. Only cases in which ONUSAL observers directly verified the existence of clear material evidence substantiating the allegations have been included. They are followed by a number of comments on the prevention of such abuses in the new era which the country is now entering and on the legal obligations to investigate and punish such abuses.

38. No. ORSA/134: Catarino Tadeo Cruz, a member of Convergencia Democrática, a political coalition with parliamentary representation. On 28 October 1991, the complainant, who was drunk, got into an argument with the mayor of Nahuilzalco on the public thoroughfare in that locality. According to the complaint, at the request of the mayor two members of the municipal police hit and kicked the complainant and threw him into a river, after which they locked him up in Nahuilzalco municipal jail. ONUSAL staff visited Cruz on 29 October and verified that he had a number of injuries: he had been kicked in the chest and back and hit on the head, the right eye and the mouth. That same day, ONUSAL observers discussed the case with the Nahuilzalco justice of the peace, who said he was not competent to handle it and that it fell within the mayor's jurisdiction.

39. The Mission was able to observe other irregularities on the same occasion. Cruz's detention, like that of two other people in the jail, had not been recorded anywhere. No reasonable explanation was given as to why the detainees were still in the municipal jail and had not been handed over to a security force. Cruz had not been seen by a doctor, his injuries had not been officially verified, and the matter had not been reported to the judicial authorities or the public prosecutor's office. ONUSAL made two unsuccessful attempts to see the mayor, advised the victim's relatives to have a doctor certify the injuries at the municipal jail and obtained permission for a doctor to enter the jail. On 30 October, Cruz was released. According to the record, he was handed over to his brother "in good health" and his detention was said to have been on the charge of "defamation of the mayor". At no point did either the victim or his relatives show any willingness to file a complaint with the judicial authorities. In this case, the Mission was able to verify that the alleged abuses had indeed occurred and that there might also have been a violation of the right to personal liberty and a failure to observe due process of law.

40. No. ORSA/160: Manuel de Jesús Escobar Castro and Arnoldo Baños Escobar. On 1 November 1991, the complainants were arrested by members of the Second Infantry Brigade near the civil defence command post at Valle San Jacinto, in the Department of Santa Ana. They were taken to the civil defence post, where they were allegedly beaten by an officer. They were released the next day and went straight to the ONUSAL offices. The Mission verified their injuries, which lend credence to their allegations of abuse and took note of a medical certificate that had been issued to them. They said that, before being released, they had been made to sign a statement that they did not feel they had been mistreated and that they were in good physical condition.

41. ONUSAL subsequently consulted the civil defence commander, who denied all responsibility on the ground that the case involved an officer of the Second Brigade. According to the Commander of the Second Brigade, the officer responsible for the incident was placed under arrest for two weeks and his superior officers were informed. Senior military officers seem to have taken positive action in punishing unlawful acts by their subordinates, sending a clear message to deter such practices.

42. No. SORC/187: Hernán Guillén Perlera, age 32, residing in the Department of Chalatenango. According to the complaint, on 3 November 1991, while he was driving on a main road, the victim was stopped by an army sergeant who appeared to be drunk and who violently demanded to see his papers. Perlera initially refused, but complied when the sergeant began firing at the ground. Several soldiers immediately began to beat him severely on the back and shoulders with their rifle butts. They then took him to the hill known as El Espino, at the entrance to La Palma, where there is a mobile military post. From there, the soldiers notified the Treasury Police, who came and took Perlera to the El Refugio police station where, according to the complaint, they tied him, standing up, to a post and forced him to stay like that all night.

43. While this was taking place, the victim's father went to the La Palma justice of the peace to file a complaint. The next day, he went to the police station where he was told that the detainee would not be released because he was a "member of the guerrilla forces". After the justice of the peace intervened, however, Perlera's father managed to get him released. Perlera showed clear signs of having been beaten.

44. On 6 November, ONUSAL talked to the justice of the peace, who corroborated the police version that Perlera had not been beaten, even though he had visited Perlera the day after his arrest. He said that Perlera had been arrested for being drunk and disorderly and that he intended to close the case since the only petition lodged had been for Perlera's release. The Mission also took the matter up with the members of the Treasury Police at the El Refugio police station, who acknowledged Perlera's detention and said that members of the army had brought him there. They added that he had been examined by a nurse and had shown no signs of having been beaten. An ONUSAL team was able to see the signs of the beating sustained by the victim, who had

haematomas on the chest, left arm and shoulder probably caused by blows with rifle butts.

45. No. ORSM/313: Santos Martín Sigüenza Coca, age 18, a peasant residing in the Department of Morazán. According to the complaint made to ONUSAL, the complainant was arrested at around 9 a.m. on 5 December 1991 by troops from Military Detachment No. 4 based at San Francisco Gotera, on a charge of involvement in "terrorist" activities. After an initial interrogation, he was blindfolded and his hands tied. As the interrogation proceeded under these conditions, his entire body was kicked repeatedly and his neck and chest were abraded. All this happened in the place where he was being held and in the absence of the officer in charge of the proceedings, who, when he returned, vigorously reprimanded the soldiers present and transferred the victim to the Guatajiagua town hall in the care of a nurse. Around 9 p.m. the same day, Sigüenza was transferred with three other detainees to the barracks in the town of San Francisco Gotera where, according to the complaint, he was not mistreated. He was made to sign a paper and was told that he would be released on 9 December 1991.

46. ONUSAL observers visited the complainant in a cell at Military Detachment No. 4 on 7 December and were able to see that he was dressed in his underwear, although he said he was being treated properly. At the same time, the Mission staff noted that Sigüenza had various abrasions on his neck and chest. The Commander of Military Detachment No. 4 confirmed to ONUSAL that one of his officers had informed him that soldiers under his command had mistreated the detainee and that, as a result, two soldiers were under arrest at the barracks. Sigüenza was released at noon on 8 December.

47. The report of the medical examination made by the nurse of the military unit states that the victim had "injuries to the neck and abdomen sustained in the course of his arrest by troops of this Detachment". The abuses described had occurred in the course of an arrest that was illegal, in that it had been made without a written order from a competent authority. ONUSAL was informed that, in the view of the commander of the military unit concerned, that constituted a misdemeanour under the Code of Military Justice of EL Salvador (art. 164). Consequently, two soldiers were sentenced to 30 days' confinement to barracks and one hour per day of manoeuvres for eight days "for abuse of authority in having beaten a civilian who had been placed under arrest".

48. The fact that the conduct of the military personnel implicated in the above abuses was considered to be a service misdemeanour and liable to disciplinary action should be seen as a positive development and should be taken as a clear message that such practices will not be tolerated. At the same time, the military unit informed the Mission that in order to establish possible criminal responsibility, the victim would have to file a formal complaint so that a military investigating magistrate could be appointed and pre-trial proceedings could be instituted.

49. No. ORSM/314: Rómulo Adolfo Lara Portillo, age 32, a tailor, residing in the Department of La Libertad. The complainant was arrested by two members of Military Detachment No. 4 at 5.30 p.m. on 5 December 1991 near Guatajiagua market as he was going to deliver women's clothing to his clients. The soldiers accused him of making military uniforms, which Lara denied. They then began to beat him, tied his hands behind his back and ordered him to sit on the ground. Before he had a chance to do so, they began kicking him in the chest and back and put a hood on him made out of an oilskin military cape. Lara managed to untie himself and take off the hood, but they immediately tied him up again and kicked him in the forehead and nose and near one of his eyes.

50. When the Mission staff interviewed him on 7 December 1991, they could see that the detainee, who complained of pain in his chest and back, had a haematoma around his right eye and bloodstains on his trousers and was being held in the cell in his underwear. Lara also reported that the officer in charge of the soldiers who had beaten him had reprimanded them and ordered them to stop. On the same day as his arrest, he was transferred to San Francisco Gotera, where he was interrogated on the two following days without being mistreated. He was released on 8 December 1991.

51. The medical report filed by the nurse of Military Detachment No. 4 states that the detainee had "multiple injuries to the face and abdomen sustained in the course of his arrest by troops of this Detachment". As in the preceding case, the abuses occurred in the course of an arrest that was deemed illegal for the same reasons as indicated above. The acts were committed by the same soldiers as in the previous case, and disciplinary action was taken against them as described in paragraph 47. In this connection, it should be taken as given that the same comments as made in paragraph 48 concerning the positive aspect of this punishment apply here.

52. No. ORSV/296: Francisco Amilcar Guerra, age 35, a trade unionist. He was arrested on 25 November 1991 by the National Police at Ilobasco in the Department of Cabañas, on a charge of drunkenness. His wife was not allowed to visit him. That same day, ONUSAL staff interviewed him in a cell at the town hall and observed unmistakable signs of his having been beaten. When this was discussed with the officer in charge of the National Police barracks, he said that the marks the prisoner bore - one of his eyes and his mouth were swollen and he had red marks on one of his hands and in the abdominal area - were the result of old injuries, and he added that Guerra had attacked the police who had apprehended him.

53. Guerra told ONUSAL that he had been beaten on various parts of his body by National Police officers and that this beating had taken place in the cells of the town hall. He attributed the mistreatment to the fact that when it was realized that he was a member of the National Association of Agricultural Workers he was accused of belonging to FMLN. Two days later, he was handed over to the local justice of the peace and released, after an inspection of his injuries by a forensic doctor. The doctor also examined the policeman who, according to the National Police, had been attacked by Guerra. According to the forensic report, the officer had no injuries of any kind.

### 6. Prevention and punishment of torture and cruel, inhuman or degrading treatment or punishment

54. The prohibition of torture and of cruel, inhuman or degrading treatment or punishment, expressly included in the San José Agreement (para. 2 (f)), derives from the peremptory norms of the main applicable international human rights instruments (see A/45/1055-S/23037, note 8 and para. 45). Together with resolute political will, the doctrine and training of law enforcement officials plays an important role in eradicating such practices.

55. Accordingly, it is appropriate to recall certain obligations of States under article 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). According to this important resolution, the training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against such practices. The General Assembly recommends that this prohibition shall also be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons. In its more recent resolution 43/173 of 9 December 1988, the General Assembly adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which reiterate the prohibition against torture and cruel, inhuman or degrading treatment or punishment. Until then, the term "cruel, inhuman or degrading treatment or punishment" had not been defined by the General Assembly, although it was interpreted as extending the widest possible protection against abuses, whether physical or mental. 8/ One novel element is that the Body of Principles contains an interpretative norm on this subject, enunciating, although not of course exhaustively, a number of examples of the prohibited abuses. 9/

56. According to article 241 of the Constitution of the Republic, when public officials, civilian or military, are aware of abuses of authority committed by their subordinates, they must inform the competent authorities as soon as possible so that proceedings can be brought. In the case of acts that can be equated with torture and cruel, inhuman or degrading punishment or treatment, it is necessary to establish, in addition to the liability to disciplinary action that may exist, whether offences have been committed that are defined in the Penal Code. 10/ Military or civilian authorities who are aware of acts of this kind are obliged, because they are offences by public officials, to report them to the competent judge, to the Office of the Attorney General of the Republic or to the auxiliary organs of justice, since failure to do so is a punishable omission. 11/

57. In so doing, they would also be complying with the recommendation of the General Assembly that the competent authorities must impartially examine allegations of torture or of cruel, inhuman or degrading treatment or punishment and institute criminal, disciplinary or other appropriate

proceedings against the alleged offenders (see resolution 3452 (XXX) of 9 December 1975, arts. 8-11).

### 7. Attacks on integrity and security of person

58. Unfortunately, the following were not isolated incidents in the period covered by this report; they have been selected as examples because ONUSAL observer teams verified them directly. All such incidents are serious violations of the right to integrity and security of person enshrined in domestic legislation and international law, to which the San José Agreement attaches the greatest priority.

59. No. ORSS/0751: Martin Langfield, a journalist. At 1 a.m. on 1 January 1992, ONUSAL received a telephone call from a journalist reporting an attack on a foreign correspondent's car in the parking lot of a hotel in the centre of the city. A team went immediately to the scene of the crime and found several cars damaged and two totally destroyed, as well as a large hole in the ground allegedly caused by an explosive device. One of the vehicles belonged to Martin Langfield, an English correspondent for the Reuters news agency and president of the Foreign Correspondents' Association in El Salvador. The subsequent ONUSAL investigation established that a total of six vehicles had been damaged in the explosion. On the basis of the investigation and of eyewitness reports from the journalists and hotel staff present, it appears that at approximately 11.45 on the evening of 31 December 1991, while a group of foreign correspondents were doing a report, there was a large explosion. A video recording made by one of the journalists present shows several cars in flames.

60. The evidence indicates that the explosive device had been placed under Langfield's vehicle. Last October, Langfield had reported to ONUSAL a kidnap attempt by unknown armed men. In addition, the Foreign Correspondents' Association in El Salvador had reported in November that Langfield and another journalist had received threats. The intended victim, who received immediate assistance from the British Embassy, has left the country. The National Police are investigating the case.

61. No. ORSS/466: Attack on the premises of Acción Cívica-Militar. A case reported by the Armed Forces General Staff on 6 November 1991, following an explosion which resulted in personal injuries and material damage. The above-mentioned institution is an army logistical support centre situated close to the territorial service command, which has authority over civil defence forces. Two people working in a canteen next to the Acción Cívica-Militar building suffered face wounds and were taken to a hospital where one of them remained for a month and the other for a day. Four other people, three of them minors, were slightly injured. All of those wounded were interviewed by ONUSAL.

62. According to the evidence collected by the Mission, four men dressed as telephone company employees left a white box, presumably containing explosives, near the premises of the aforesaid company and told a nearby group of children to move away. ONUSAL considers it important to continue investigations in order to determine responsibility for this action.

## B. Right to due process of law

### The Jesuit case

63. On 23 January 1992, the competent court passed sentence in the Jesuit case (see A/46/658-S/23222/Corr.1, paras. 130 ff.), sentenced Colonel Guillermo Alfredo Benavides Moreno to 30 years' imprisonment for the crimes of murder and conspiracy to commit acts of terrorism, and acquitted him of the charge of acts of terrorism. Lieutenant Yusshi René Mendoza Vallecillos was sentenced to 30 years' imprisonment for the crimes of murder, incitement and conspiracy to commit acts of terrorism and actual complicity, and was acquitted of the charge of having planned or carried out acts of terrorism. Three other officers were sentenced to three-year prison terms for various crimes which were not within the jurisdiction of the jury but were ruled on by the judge. The rest of the accused were acquitted of all charges. On 10 December 1991, the private complainant withdrew the civil action that had been brought directly against the accused and, secondarily, against the State, concerning civil liability for the incidents. The complainant asserted that the State had privately and satisfactorily compensated the victims.

64. Although the sentence has not been confirmed and notwithstanding the reservations expressed in the previous ONUSAL report, this judgement is an important precedent for the judicial protection of human rights in El Salvador. The compensation paid to victims of serious human rights violations deserves a special mention. Although the Mission does not know the terms of the out-of-court settlement mentioned by the private complainant, its mere existence implies considerable progress towards recognition of the State's civil liability for the unlawful acts of its agents. 12/

### Investigation of the El Mozote incidents

65. On 26 October 1990, Pedro Chicas Romero, a 51-year-old day labourer residing in the Department of Morazán, went to the Second Court of First Instance of San Francisco Gotera, the departmental capital, and filed a complaint against members of the armed forces for the murder of some 1,000 civilians during an operation carried out between 8 and 16 December 1981 in various parts of the Department of Morazán. The incidents allegedly occurred in the hamlets of El Mozote, Ranchería, Los Toriles and Jocote Amarillo and in the cantons of La Joya and Cerro Pando, all in the Department of Morazán. At the time of the complaint, the statute of limitations for criminal proceedings had not expired.

66. The judge began his investigation of the case, took statements from 14 witnesses, several of whom also gave statements as victims, and ordered writs to be issued in order to gather information for the court on the national army units that had been operating in the area in December 1981 and on the commanders and officers in charge of them. The writs have yet to be answered by the competent authorities.

67. With reference to the exhumations necessary to prove the corpus delicti, on 20 November 1991 the judge sought the cooperation of the International Committee of the Red Cross and of the "Dr. Roberto Masferrer" Forensic Institute located in the capital city. He also decided to issue a writ to the Ministry of Defence to ascertain the potential risks from any mines that might have been laid and whether any fighting was going on, and to ask whether the competent bodies could guarantee security. Two days later, the court sent letters to ONUSAL, the Executive Secretary of the governmental Human Rights Commission and Legal Protection, asking them to take part as observers in the exhumation and inspection of the bodies.

68. On 9 November 1991, Legal Protection published the results of a preliminary investigation into the incidents. These included a list of 794 persons said to have met their deaths in the places and on the dates previously indicated; all were listed by name, although the reliability of identification varied. In many cases, the identity data presented were incomplete since the victims were very young children. The report stated that the number of victims was greater and that the investigation was continuing. In addition, it gave the names of the alleged direct or indirect perpetrators and the name of the military unit that allegedly carried out the actions.

69. On 13 December, the Ministry of Defence and Public Security answered the writ referred to in paragraph 67, stating that for the time being security conditions were not such as to permit the exhumations. It also stated that the armed forces would be able to clear the ground of any mines and other obstacles.

70. The Mission thinks it appropriate to recall the Principles on the Effective Prevention and Investigation of Summary Executions endorsed by the General Assembly in resolution 44/162. First of all, the examination of skeletal remains requires that they be carefully exhumed and studied according to systematic anthropological techniques (Principle 12). Given present conditions in the country, it is therefore advisable from the scientific and technical standpoint to use the services of international experts in forensic anthropology, who could be present, together with local professionals, to supervise the exhumation and laboratory analyses. 13/

71. In view of the time that has passed since the victims' death, their number and the fact that many of them are buried in common graves, there is a need for proper investigative methods. Above all, all possible witnesses of the alleged incidents must be found and interviewed. 14/ It is therefore a positive sign that the investigating judge is continuing to receive sworn

testimony and has not put into effect the temporary suspension of such testimony previously decided upon. In addition, assurances must be given that the witnesses will be protected if necessary.

72. Lastly, Principle 15 concerning the investigation of summary executions should be borne in mind. It states that "Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."

Observation of a public hearing

73. No. ORSV/62: Tito Orlando Zelaya Mendoza, carpenter, age 21. According to the complaint, he was killed at about 10 p.m. on 21 September 1991 in the Department of San Vicente, following an argument with a soldier in a bar. The soldier allegedly tried to fire his M-16 rifle, which apparently jammed. He then ran to the checkpoint where he was on duty, took another M-16 and returned to where Zelaya was and shot him several times, fatally wounding him.

74. The judge of the First Criminal Court of San Vicente commenced pre-trial proceedings on 22 September 1991. The suspect was arrested and confessed to the killing, but claimed that it had occurred during a struggle. Trial proceedings began on 4 October on the charge of murder. On 30 September, the soldier in question, a member of the Fifth Infantry Brigade, was discharged. No autopsy was performed on the victim's corpse and no ballistic tests were done on the weapon used by the accused. There was abundant evidence for the prosecution. Three people had volunteered to make statements, and four people recognized the accused in a line-up. According to some witnesses' statements, two other people had witnessed the crime, but neither they nor a sergeant said to be the immediate superior of the accused were called by the judge. Neither the prosecution nor the defence took any significant action during the pre-trial proceedings.

75. ONUSAL attended the public hearing of the case, which was held on 19 November 1991 and lasted about four hours. The summary, which gave the essential facts in the case, was read out rapidly and not very audibly, making it difficult for members of the jury and the public to follow. When the reading was over, the judge failed to observe the legal requirement that he ask members of the jury whether they wished to question the accused or any of the witnesses who had already been examined. 15/ The members of the jury also failed to ask any questions.

76. The parties' arguments lasted about three hours. The defence was undertaken by the Office of the Chief State Council and stressed emotional arguments, such as the young age of the accused, who was 17 years old at the time of the killing and had been forcibly recruited a year earlier. The prosecution, on the other hand, chose to deal with the substance of the case. The atmosphere at the public hearing was calm, although the victim's family criticized the attitude of the accused, which they considered defiant. The

jury found him innocent. The trial judge acquitted him on 3 December 1991, and this decision was confirmed by the San Vicente appeals court on 6 January 1992.

77. This case raises questions about the system of trial by jury used in El Salvador for crimes punishable by a maximum prison term of more than three years, 16/ a subject the Mission broached in its previous report. The Code of Criminal Procedure now in force emphasizes written proceedings, with only very limited oral proceedings. This eliminates many of the advantages claimed for jury trials by their proponents.

78. One consequence of this system is disregard for the principle of procedural immediacy, whereby the court must work as closely as possible with the evidence. The jury arrives at its verdict without having been present for the statements of the accused or the examination of the witnesses. This doubtless makes it very difficult for a jury of laymen to arrive at a verdict consonant with the concept of objective justice. This concept refers to the appropriateness of judicial procedures and the manner in which the evidence is weighed in order to choose the juridical approach that will be most effective in uncovering the truth. 17/

79. At the public hearing, the legal requirements for the reading of essential parts of the proceedings were not observed, since the summary was not read out sufficiently clearly for jurors to form an exact idea of its content. 18/ Although Salvadorian law does not expressly require it, contemporary doctrine of criminal procedure holds that the judge must guide and instruct the members of the jury so as to enable them to understand how the judicial system works and to prepare them to play their role properly. 19/ As has often been pointed out, one key to the effectiveness of oral proceedings is the judge's power to guide the debate. It is the judge's responsibility to prevent the frequent and often declamatory verbal excesses which are one of the criticisms made of the system. In that role, he must give the necessary legal warnings, moderate the discussion and prevent inappropriate disquisitions, without limiting the functioning of the prosecution nor the rights of the defence.

80. Whatever substantive changes may be required in the system of criminal proceedings, these tenets, on which a considerable degree of consensus exists in legal doctrine and which are derived from the experience of many countries that have adopted the system of oral proceedings in their criminal procedure, should be borne in mind in future. The legal requirement that the summary should be read out clearly so that members of the jury can understand it properly should also be observed.

## III. SITUATIONS AFFECTING HUMAN RIGHTS

### A. Right to personal liberty

#### 1. Arrest of juveniles

81. The Mission has noted that the conditions under which juveniles are arrested often violate several of the human rights of that population group, which should receive special protection because of its vulnerability. It has noted instances in which the arrest of juveniles was arbitrary or unlawful on various counts. At times, juveniles were taken into custody by the armed forces, which, as stated below, lack such authority, except in cases of in flagrante delicto. What made arrests unlawful in some instances was that the minimum age for purposes of criminal responsibility was not observed. 20/ Juveniles have been held without being brought before the juvenile courts, which have exclusive jurisdiction in respect of transgressions considered petty or criminal offences under the ordinary law, when the accused is not more than 16 years old. 21/ Those courts also have exclusive jurisdiction in respect of juveniles not more than 18 years old who are abandoned, neglected or at risk, within the meaning of the respective Juvenile Code. Likewise, the juvenile courts have exclusive competence to adopt any measures relating to juveniles covered by the Code.

82. Often, juveniles are not transferred immediately to a juvenile centre or to the local town hall; rather, they are held in police cells for long periods together with adults, in flagrant violation of domestic legislation (Juvenile Code, art. 71) and the international instruments referred to in the following paragraph. In one case, a juvenile arrested by the National Police was brought before a criminal-court judge, who ordered her to be held in a cell with adult women, where she remained for over a month. There was a long delay in notifying the juvenile court. In another instance, a juvenile was held together with adults for long periods, and on one occasion, according to his mother, he was sexually abused by adult inmates. Another child spent one night in a police cell with seven adult inmates, some of whom allegedly harassed him.

83. One norm that is clearly recognized at the international level is the one prohibiting the incarceration of juveniles together with adults. That prohibition is laid down in five international instruments of a universal character and in the American Convention on Human Rights. 22/ The Government of El Salvador has acknowledged that the norm has been violated in practice, attributing that breach to socio-economic reasons and the lack of adequate establishments. 23/ However, the principle that juveniles should be separated from adults brooks no exception, as is clear from the commentary by the Human Rights Committee to article 10 of the International Covenant on Civil and Political Rights, which refers explicitly to that principle. 24/

84. It is disquieting that the timely transfer of juveniles in custody to juvenile centres is not guaranteed on a regular basis. In practice, it seems

that often the judges in the juvenile courts of San Salvador are not notified on a regular basis about juveniles in custody, and if they are notified, it is almost always after the statutory deadline. In some cases, too, the arrest of juveniles is not recorded in the logbooks. It must be borne in mind that the right of juveniles to be tried by special courts is expressly recognized at the regional level in the American Convention on Human Rights (art. 5 (5)). As far as legislation is concerned, the rights of the child are set forth in the legal provisions now in force. The Constitution of El Salvador includes several clauses specifically designed to protect those rights. 25/ Moreover, El Salvador has signed and ratified the major international human rights treaties applicable in this area, including the Convention on the Rights of the Child (annex to General Assembly resolution 44/25 of 20 November 1989). The country's domestic legislation, while no doubt leaving room for improvement, also makes provision for the rights of the child.

85. In addition to strengthening the applicable laws and regulations, El Salvador should strive to improve the functioning of State organs having jurisdiction over juveniles. In particular, there seems to be a need to tighten controls over police and administrative officers, rehabilitation centres and juvenile welfare establishments, so as to ensure full respect for the human rights of juveniles deprived of their liberty, for whatever reason, and juveniles subject to any kind of measures imposed by a juvenile court. In this connection, the provisions of the San José Agreement affording protection from unlawful and arbitrary arrest, particularly paragraph 2 (b), remain fully valid.

### 2. Arrests by military personnel

86. The second ONUSAL report (para. 94) pointed out that the army often arrests people without handing them over immediately to the security forces, as required by law. It recalled that military personnel were permitted to make arrests only in cases of *in flagrante delicto*. The Mission has learnt of cases where people were held for varying lengths of time by military units, which often carried out procedures appertaining to judicial organs, or grilled the detainees.

87. The Mission was able to verify that a 14-year-old boy was arrested by military personnel on suspicion of belonging to subversive organizations, and was held at a military compound for over 30 hours. This is a blatant violation of current legislation; any such arrest would be unlawful, but this case involved a juvenile who could not be charged under the Penal Code (art. 16). The Mission learned that, in another instance, a 21-year-old youth was arrested on 3 October 1991 at a military detachment to which he had gone voluntarily, and was held there until 31 October. On various occasions, the Mission was able to verify that men and women had been arrested by military personnel on suspicion of belonging to subversive organizations. They remained at military compounds for periods ranging between 26 and 48 hours. In one case, a detainee remained on military premises for 73 hours, after which the unit released him without making any record of the arrest.

88. In these cases, arrests are made by the army, in conflict zones, and those arrested are civilians who are generally of peasant origin. Usually they are arrested on suspicion of belonging to subversive organizations, but there is no evidence that these are cases of in flagrante delicto. People are arrested because they were informed on by informers not identified in any record of the proceedings. Following the arrests, there is no investigation by the auxiliary organs of justice - and their place, after all, cannot be taken by the armed forces. The individuals are interrogated by the armed forces, without any legal guarantees for their defence, without any record of the time of the interrogation, and without any signatures of witnesses in attendance. Instead, a file, classified as secret, is prepared containing information on the individual and on his or her possible links to FMLN. 26/

89. The activities referred to in this section constitute unlawful arrest because, first of all, they are practised by officials lacking in jurisdiction. The unlawfulness of such arrests is manifest both in terms of the San José Agreement (especially paragraph 2 (b)), and in terms of domestic and international law. In this connection, it should be pointed out that deprivation of liberty constitutes a breach of international norms if there is no provision for it in domestic legislation, or if there is no regard for the basic procedures and requirements laid down in such legislation.

90. The American Convention on Human Rights (art. 7 (2)) includes an additional requirement: the requirement that any deprivation of liberty and any act of detention must be not only lawful, but also constitutional. The provision reads as follows: "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." In this connection, it is worth reaffirming once more that the armed forces must refrain from the practice of making arrests, which is unconstitutional and unlawful. It is to be hoped that this practice will be eliminated now that the country finds itself in a new situation.

## B. Freedom of movement

91. Inasmuch as this topic, which is crucially important to society as a whole, was not addressed in previous ONUSAL reports, the present report will cover the practices observed between the establishment of the Mission on 26 July 1991 and 31 January 1992.

92. Freedom of movement is recognized in the Constitution of El Salvador (art. 5), in the San José Agreement (paras. 7 and 8) and in international instruments applicable in El Salvador. 27/ Monitoring freedom of movement before the cessation of the armed conflict has been a complex task, for the conduct of military operations may justify certain temporary restrictions on that right, under the specific conditions to be referred to below. Moreover, certain consequences of the conflict, such as the problem of undocumented persons, have impeded the enjoyment of freedom of movement. It was noted

throughout the initial phase that it was precisely in conflict zones that the greatest restrictions were imposed on that right.

93. A large percentage of the complaints received by ONUSAL referred to activities by fixed or mobile military checkpoints in the interior of the country, controlling the movement of both people and goods. Such controls have frequently been arbitrary, depending on what are often discretionary assessments by military personnel, and have in many cases been conducted in a climate of intimidation. It is alleged that during some of those controls, individuals have been taken into custody and conscripted into the armed forces. The instructions governing the issuance of safe-conducts have been neither uniform nor clear: sometimes it has been possible to have them issued by military detachments or infantry brigades in various parts of the country; at other times individuals have been required to apply to the General Staff in the capital city.

94. As to the movement of goods, there have been frequent allegations that on various roads and tracks throughout the country, military units have denied passage to foodstuffs, medicine, teaching materials, textiles, fertilizer, housing-construction materials and other supplies, on the grounds that they might serve as provisions for FMLN. The military authorities have often sought to justify restrictions on freedom of movement by arguing that many returnees or internally displaced persons were supporting guerrilla activities. This has been denied by communities of such persons and, in any event, cannot justify collective punishment or reprisals against civilians. 28/

95. It may be added that problems have often arisen not so much because of a total ban on the movement of people and goods, but rather because of delays, stress and strain, and material losses due to military controls and checks that have not always seemed reasonable or strictly necessary.

96. During the first phase of the period covered in this section, there were more and more instances in which FMLN troops cut off tracks and main roads in various parts of the country. Such actions were often responsible for restrictions on the right to freedom of movement of civilians and civilian goods. Although such conduct was sporadic and linked to the evolution of the armed conflict, it caused the Mission some concern, especially in terms of the protection of the human rights of the civilians affected.

97. During the second phase of the period covered, there were highly significant political and military developments, which had a direct bearing on the matter under consideration. During an initial stage lasting until the end of 1991, there appeared to be fewer restrictions by the armed forces on freedom of movement in the Departments of Morazán and Chalatenango, whereas there was an increase in controls in the Departments of San Salvador, Cuscatlán and San Vicente, especially in connection with land occupations. There were, however, exceptions even where the general situation appeared to have improved. The commemoration, on 11 December 1991, of the tenth anniversary of the El Mozote tragedy was impeded by the proliferation of

military checkpoints - 14 between Cuscatlán bridge, in the Department of San Vicente, where the eastern region begins, and the city of Perquín, in the Department of Morazán.

98. In the most recent period covered in this section (up to the end of January 1992), the situation regarding freedom of movement improved significantly in virtually all parts of the country, an improvement closely linked to the signing of the Peace Agreement and the favourable political and military developments that followed immediately. In the last days of January, some checkpoints were removed, and work on the dismantling of others began. Troops at some of the remaining checkpoints were not controlling the movement of people and goods, but were merely displaying a military presence.

99. Freedom of movement is a right that may be suspended under a state of emergency (arts. 29 and 30 of the Constitution of El Salvador, and art. 4 of the International Covenant on Civil and Political Rights). In El Salvador, however, constitutional guarantees were not suspended at any time during the period covered; the aforementioned right was therefore fully in effect under the law. Yet even under a state of emergency, the very principles of democratic constitutional law demand that all measures must meet certain requirements (must be strictly necessary, short-term and proportional), requirements that were not always fulfilled by the military authorities at a time when constitutional guarantees were still fully in force. In particular, the stipulation that nationals had to have safe-conducts - or had to be on a list - in order to travel seems inconsistent with constitutional provisions and with the international obligations assumed by El Salvador.

100. It is understandable that during an armed conflict, restrictions on freedom of movement may be imposed by the authorities by reason of military necessity, such as the deployment of military units and the conduct of war operations. Likewise, the military authorities may adopt measures restricting freedom of movement on a temporary basis, if exercise of that right at a particular time and in a particular place might put into jeopardy the security, physical safety and very lives of civilians. However, systematic or arbitrary restrictions on the freedom of movement of people and goods are incompatible with current legislation, including international humanitarian law, and with the San José Agreement.

101. Over and above the preceding considerations, the Mission takes the view that the evolution of a practice that is always the key to the full enjoyment of human rights is just as important as the improvement of the juridical framework. The Mission therefore saw as a welcome development the steps taken in 1991, even before the cease-fire, to ease restrictions imposed by the military authorities on the movement of civilians and civilian goods. Such restrictions should quickly disappear now that the country finds itself in a new situation since the signing of the Peace Agreement. The most recent trends indicate a movement in this direction.

## C. Personal documentation

102. Since its previous report, the Mission has gained a better understanding of the problems of personal documentation in El Salvador. While some progress has been made in this field, much still remains to be done in order to ensure compliance with the State's obligations under the San José Agreement (paras. 7 and 8), the Constitution of El Salvador 29/ and international instruments in this area (see A/46/658-S/23222, note 19). According to reliable sources, the registers at some 90 town halls have been totally or partially destroyed. Sixty-five of those town halls are in 4 of the country's 14 Departments: Chalatenango, Morazán, San Miguel and Usulután. It is estimated that while between 20 and 80 per cent (depending on the community) of returnees in conflict zones have no personal documentation, more than half of the refugees repatriated in October 1987 still have no personal documentation more than four years since their return.

103. While some mayors have displayed a greater readiness to solve such problems, others have still not done so. The Mission was very gratified by the cooperation of the Central Board of Elections with the Villa Victoria town hall, in the Department of Cabañas, when in November 1991 it supplied photocopies of the registers of births, deaths and marriages that had been microfilmed before their destruction. The second ONUSAL report recommended that similar action should be taken nationwide (ibid., para. 164). Although such photocopies enable a town hall to verify an individual's previous civil status, the Board needs to cooperate and process the birth certificate. It is not always quick to respond.

104. The Mission has been informed that various agencies concerned with that issue have expressed broad support for the preliminary draft of a special law to establish the civil status of undocumented persons affected by the conflict. The draft, which has not yet been submitted to the Legislative Assembly, would authorize the registration of the births of all undocumented persons affected by the conflict, including minors born abroad. Although it provides a simple and streamlined procedure for establishing the civil status of those affected, the draft does not include provisions making it easier to obtain identity cards.

## D. Freedom of association

105. The San José Agreement (para. 5) guarantees freedom of association, and refers specifically to trade union freedom. This is a right to which the Mission is required to devote special attention (para. 11 of the Agreement). Whenever ONUSAL monitors respect for freedom of association, it will do so within the terms of its mandate. Accordingly, its role is not to consider issues arising in the sphere of private activity, except in so far as freedom of association has not been duly protected by the State through the competent organs.

106. Freedom of association is governed by the Constitution of El Salvador, by current international treaties and by domestic legislation. 30/ This legislation describes the procedure whereby associations may gain legal recognition, but the procedure is not clearly defined for all associations in the country. There are no legally defined procedures for legal recognition of humanitarian organizations, human rights organizations and, in general, civilian societies and associations. As a result, they are subject to general legal provisions 31/ and to the exercise of discretionary powers, especially on the part of the Ministry of the Interior.

107. Such organizations usually operate under the umbrella of the juridical personality of other institutions, such as universities and churches. Some operate on a de facto basis without encountering any major problems in carrying out their mandates. A number of associations of various kinds sprang up during the period of the armed conflict; many of them do not possess a juridical personality, but continue functioning. As a rule, political and labour organizations do not have major difficulty in gaining legal recognition. In this area, domestic legislation clearly spells out the legal requirements and the procedure to be followed in acquiring a juridical personality. 32/ The Mission has, however, received complaints and information that need to be followed up regarding irregularities in connection with the exercise of trade union freedom. They involve several cases in which workers were allegedly dismissed without regard for the appropriate legal provisions and requirements.

108. It is alleged that the reason for the dismissals was that the workers belonged to trade union organizations or were trade union leaders, or that the action was in retaliation against trade union organizations being formed. There were other reports about threats to dismiss workers, even workers who had many years of service, so as to prevent them from forming or participating in trade union organizations. In addition, there have been complaints that the military authorities have searched trade union premises without obtaining court orders and without complying with the provisions of the law in that area. The Mission will continue looking into information received about trade union freedom and, in general, the exercise of freedom of association. It will include the results of its investigation in future reports.

## IV. CASES AND SITUATIONS RELATING TO INTERNATIONAL HUMANITARIAN LAW

### A. Humane treatment

109. This section will deal with relevant cases of the application of international humanitarian law to the internal armed conflict in El Salvador, in accordance with the criteria established in the first ONUSAL report (A/45/1055-S/23037, paras. 17 and ff. and paras. 50 and ff.).

110. No. SORU/186: Fermín Rodríguez Romero, age 25, farmer, residing in the Department of Usulután. On 2 December 1991, the commander of the Navy Infantry Battalion reported the death of Fermín Rodríguez to ONUSAL, attributing it to members of FMLN. This report was reiterated the following day by a letter from the Sixth Infantry Brigade. ONUSAL contacted the FMLN area command and was informed that Rodríguez, who had been captured on 21 November 1991, had been shot by a firing squad five days later on a charge of "spying" for the armed forces. His collaboration was alleged to have caused the death of a number of FMLN members and to have endangered the lives of others, including civilians who might have provided some support to FMLN. Because of the detailed knowledge concerning FMLN members and encampments which Rodríguez was alleged to possess, it could be assumed that the risks to FMLN continued. Accordingly, expulsion from the area was not considered sufficient punishment. Reportedly, there was proof, aside from the individual's confession, of the alleged facts. The decision to proceed to the application of the death penalty by firing squad was taken by the command of the southeastern front of FMLN, without the participation of civilians. The sentence was communicated orally to combatants, and was announced by "Radio Venceremos" radio station, and flyers were also distributed to inform the civilian population. The body was handed over to the family.

111. In internal armed conflicts, the provisions relating to humane treatment contained in Additional Protocol II and referring specifically to penal prosecutions (art. 6) must be observed by both parties, both by the established Government and by FMLN. 33/ These provisions establish unrepealable minimum guarantees of due legal process in respect of criminal proceedings for incidents related to the armed conflict, both at the stage of pre-trial proceedings and that of the trial itself. This norm establishes the right to be tried by a court "offering the essential guarantees of independence and impartiality" for criminal offences related to the armed conflict, a broader precept than that of article 3 of the four Geneva Conventions of 1949, which recognizes the right to be tried in such cases by a "regularly constituted court", a requirement which an insurgent force may have difficulty meeting. Nevertheless, it has been considered that any responsible and organized entity can and must observe the principles established in article 6 of Additional Protocol II, which make up the right to an impartial trial.

112. To date, the most authoritative interpretative elements on the independence and impartiality of the courts are the Basic Principles on the Independence of the Judiciary, confirmed by the General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, in the case under consideration, it is necessary to bear in mind Principle 2 concerning the manner in which judges must decide matters brought before them. 34/ The organ which pronounced the sentence of death cannot be considered an independent and impartial court within the meaning of Additional Protocol II (art. 6 (2)), interpreted in accordance with the Principles referred to in the preceding paragraph. In fact, according to information provided to the Mission by FMLN, the sentence was pronounced by the FMLN command in the area, that is to say by persons whose political differences with the accused seriously jeopardized their independence and impartiality, as currently defined according to the applicable international precepts. Furthermore, according to all indications, the individuals who took the decision had no legal training, which is one of the requisite elements for making a proper assessment of proof in a case of this magnitude.

113. Another objection of substance refers to observance of the principle of legality according to which "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed" (Additional Protocol II, art. 6 (2) (c)). The FMLN Political and Diplomatic Commission had previously delivered to the Mission a document entitled "Principios, Normativos y Medidas Dispuestos por el FMLN en el transcurso de la guerra" (Principles, norms and measures ordered by FMLN in the course of the war). 35/ This document is far from being a compendium of the basic norms of a penal system, as required by Additional Protocol II (art. 6 (2) (c)), nor does it establish procedural guarantees, in particular "all necessary rights and means of defence" (Additional Protocol II, art. 6 (2) (a)) and the right to appeal a sentence (Additional Protocol II, art. 6 (3)).

114. Aside from the shortcomings of the precepts commented on in the preceding paragraph, it should be pointed out that the necessary rights and means of defence were not, in practice, guaranteed in the case under consideration. 36/ The extremely summary nature of the proceedings is demonstrated by the short period of time - a mere five days - that elapsed between the time Rodríguez was captured and the time he was executed. This period of time seems incompatible with the exercise of all necessary rights and means of defence "before and during his trial", that is to say during pre-trial proceedings and during the trial itself, particularly in a case involving possible application of the death penalty (Additional Protocol II, art. 6 (2) (a)).

115. For all these reasons it should be considered that, in the case under consideration, there has been a gross violation of the unrepealable rules concerning humane treatment related to penal prosecutions set forth in Additional Protocol II (art. 6).

116. No. ORSV/215: Julio Guzmán Navas, age 20, Venezuelan. At 2.30 p.m. on 30 October 1991, the commander of the Fifth Infantry Brigade asked ONUSAL to verify, that same day in the town of Santa Clara, Department of San Vicente, the death of an FMLN combatant which had occurred during a clash. According to the report of the first ONUSAL team to arrive on the scene, two blocks from the park, they found the body of a young man dressed in civilian clothing lying in the street face up, without either shirt or shoes. There were bullet holes in the body at the height of the left and right pectoral muscles and in the neck; there were no other marks on the body. According to an officer of the armed forces, the young man, who had been deemed to be acting suspiciously, had been asked to show some identification, whereupon he had fired a pistol, wounding a soldier in the arm. Another soldier had promptly returned the fire, killing the man, who was later identified as Julio Guzmán Navas.

117. The incident created tensions in the town. The body was buried the following day. That day, ONUSAL contacted the local FMLN command, which informed ONUSAL of the dead man's name, nationality and date of birth. According to the command, as a result of clashes between FMLN and the armed forces in Santa Clara in the morning, Guzmán had entered the town early in the afternoon in order to see whether there was any military presence.

118. On 7 November, at the request of the family who do not live in El Salvador, the body was exhumed and an autopsy performed; however, this was done before the family arrived in El Salvador. The autopsy was performed at the judge's request, in the presence of an ONUSAL medical observer, but the customary medical procedures regarding autopsies, such as opening of the cranium and abdomen and examination of internal organs, were not observed. According to the autopsy report, death was caused by a penetrating wound of the thorax made by a projectile which entered the left deltoid area. The report speaks of a "massive haemorrhage which flooded the lower respiratory tract, which in turn was obstructed by blood clots, causing asphyxiation".

119. In the initial pre-trial proceedings, it is recorded that the first judge hearing the case found four spent 5.56 calibre shells from an M-16 rifle; however, there is no mention of shells of any other calibre which might have belonged to a pistol belonging to the deceased. One witness summoned in the case heard four shots from large calibre weapons and did not mention any shots by the deceased, nor did he report having seen a wounded soldier. The National Police reported that according to the Santa Clara justice of the peace, the combatant's death was a result of heavy fighting between soldiers and FMLN, which was heard around 1.30 p.m.; this report is not consistent with the other findings of the investigation, namely, that death occurred in the town and was not preceded by a confrontation between armed groups.

120. According to the justice of the peace, the pistol found on the victim was a Star B. Echeverría Eibar, Spain, whereas the National Police states it was a Browning; however, both reports agree on the number on the weapon. The pistol

was not handed in to the court but to a military depot of the Fifth Infantry Brigade. The report states that the deceased was shot with a 5.56 calibre M-16 rifle; that weapon has not been handed in to the court either. No ballistic tests were carried out on either weapon, nor was a paraffin test carried out on the deceased to determine whether he had fired a weapon. The dead man's clothing was removed shortly after his death, no one knows by whom. There was no on-the-spot re-enactment of the incident. Neither the soldier who fired nor two others who were nearby made any statement to the court. The record of the proceedings contains two conflicting statements by a soldier who is alleged to have been wounded in the incident, although the contradiction can be attributed to fear of reprisals.

121. On 12 November 1991, ONUSAL observers interviewed several witnesses, none of whom claimed to have witnessed the incident directly. Although their accounts were not identical, all agreed that three or four shots were fired in quick succession. Two people identified the shots as coming from a handgun, and another said it was a large calibre weapon. No one said that the victim had been executed but they did say that although he survived a relatively short period of time the soldiers did not allow anyone to approach the wounded man to give him any kind of first aid. The ONUSAL investigation found that two soldiers had met Guzmán at around 2 p.m. two blocks from the park in the town of Santa Clara. According to the soldiers' account, they began walking with Guzmán to bring him to their patrol leader. On the way, the guerrilla fighter drew his weapon, turned around and fired at the two soldiers, wounding one of them in the arm. The other soldier returned the fire, wounding Guzmán in various parts of the body. The soldier stated that, as he fell, Guzmán fired a last shot which hit the ground. ONUSAL observed a mark on the ground. The same witness stated that Guzmán tried to take a grenade from his pocket but failed to do so.

122. From the various contacts between ONUSAL and the local FMLN command, it also emerged that Guzmán was armed the day of the incident; according to that source, he was carrying a 9 mm Spanish-brand pistol and a hand grenade. Nor is there any doubt about the fact that there was an exchange of shots between two soldiers and Guzmán. However, the FMLN representative emphasized that it had been very difficult to obtain reliable information on the incident thus far.

123. The investigation initiated by Legal Protection agrees with the other sources concerning the time the events occurred. According to its report, Guzmán was recognized by one of the soldiers of the Fifth Infantry Brigade. After an exchange of words, the soldier fired several shots at Guzmán who fell to the ground gravely wounded. There is no mention of an exchange of shots. According to one person who claims to have been an eyewitness, several soldiers approached the guerrilla fighter and kicked him in the stomach and thorax while shouting insults. The wounded man is reported to have died 40 minutes later, without receiving any care.

124. The dead man's family requested, through Legal Protection, that the body be exhumed so that a proper autopsy could be performed to determine the cause of death. Although the examination had been scheduled for a specific date, it was performed 24 hours earlier, without anyone being informed of the change. Thus, neither Legal Protection nor the victim's family were able to be present. Guzmán's mother asked for ONUSAL's support in clarifying the incident. In a letter addressed to the Chief of Mission, she said that, according to the information at her disposal, her son had been executed. Guzmán's family met at ONUSAL headquarters with the Chief of Mission and expressed serious doubts concerning the conduct of the pre-trial proceedings.

125. From the legal standpoint, the case deserves to be approached with two types of consideration in mind: the rules applicable under domestic law in cases of suspicious deaths, on the one hand, and international law and the rules of international humanitarian law on the other. The first aspect requires the application of principles relating to the investigation of a death which is not due to natural causes, which are set forth in the Code of Criminal Procedure of El Salvador (arts. 150 and ff.) and in the norms which the General Assembly has recommended be applied to all States in such cases. 37/ It is clear from the account of the investigation that the latter presents numerous shortcomings as far as these rules are concerned. We need only mention the absence of any statement in the pre-trial proceedings by persons whose testimony was vital - for instance, the soldier who shot Guzmán - the delay in performing an autopsy and the inadequacies of the autopsy when it was performed, the handling of the scene of the crime or the many above-mentioned contradictions which were not clarified.

126. Likewise, international humanitarian law establishes fundamental guarantees of humane treatment which include the obligation concerning protection and care of the wounded (Geneva Conventions of 12 August 1949, art. 3 (2), and Additional Protocol II, art. 5 (1) (a) and art. 7).

127. The Mission considers it impossible to draw definitive conclusions based on the information gathered thus far and in the absence of a proper autopsy. The team which investigated the case reached the preliminary conclusion that the deceased was killed in an exchange of fire. While there is no doubt about the exchange of fire, the fact remains that the wounded man was not given any assistance during the short time he lay on the ground. This happened in a populated area, outside a combat situation, and is thus a breach of the rules of international humanitarian law regarding protection and care of the wounded referred to in the preceding paragraph.

128. No. ORSM/49: Pedro N., residing in the Department of San Miguel. This case was dealt with in paragraphs 64 and 65 of the second ONUSAL report. According to a complaint filed by the armed forces, on 25 August 1991, the ambulance evacuating a soldier who had been wounded in combat - identified in the report as Pedro N. - was stopped in the Department of Morazán by FMLN combatants. According to the complaint, the victim was alive when this occurred and it is claimed that his captors were responsible for his death due to lack of assistance.

129. FMLN has on several occasions informed the Mission that it disagrees with the account of this incident given by ONUSAL in its report. On 12 December 1991, the FMLN Political and Diplomatic Commission transmitted a series of comments on the report, indicating that paragraph 64 omits the FMLN account according to which the soldier being transported in the ambulance was already dead when the ambulance was stopped. In turn, in a note dated 24 December 1991 from the National Army for Democracy (END) addressed to ONUSAL, it is stated, in particular, that the soldier who was being taken by ambulance was already dead when the ambulance was detained by END units, and that this had been confirmed by one of the nurses who was in the ambulance.

130. These clarifications, which were inadvertently omitted, are important inasmuch as they refer to a question of fact, which of course is difficult to verify but which is relevant to the legal classification of the case. In the light of these clarifications, the Mission considers that there is insufficient information to be able to state with certainty that the case involved a violation of the rules on humane treatment referring to the protection and care of the wounded stipulated in Additional Protocol II (arts. 7 and 5 (1) (a)).

## B. Civilian population

### 1. Indiscriminate attacks

131. The first general rule governing the conduct of hostilities applicable in the case of a non-international armed conflict concerns the distinction between combatants and civilians. This rule prohibits, in particular, indiscriminate attacks, including attacks that do not respect the principle of proportionality and those that are launched without taking the necessary precautionary measures. 38/ The aforesaid general rule is set forth in General Assembly resolutions 2444 (XXIII) of 19 December 1968 and 2675 (XXV) of 9 December 1970, in the Geneva Conventions of 12 August 1949 (art. 3 (1) (a)) and in Additional Protocol II thereto (art. 13 (2)). Precautionary measures in attack are closely related to the distinction between combatants and civilians, as is clearly established by the most authoritative doctrine. 39/ The rule on precautions in attack is also given in paragraph 3 of General Assembly resolution 2676 (XXV). 40/ As for determining which of the precautionary measures it is advisable to adopt, Additional Protocol I (art. 57) contains information considered useful in its analogous application to internal armed conflicts. 41/

132. No. SORC/226: María Carmela Martínez Barrero, age 13, residing in San Antonio los Ranchos, Department of Chalatenango. ONUSAL visited this village on 25 November 1991 because, as reported by the community's human rights monitor, mortar shells were being fired in the community's direction. Mission observers assessed the impact of both gunfire and mortar fire on various buildings. On the church roof, two large holes caused by 50 mm gunfire were verified; this was confirmed by the recovery of various projectiles. In two

houses, traces of rifle and 50 mm machine-gun fire were confirmed. Finally, it was established that some of the shots had come from 60 mm mortars. Given the location of the dwellings concerned and the church, it can be stated that the shots were aimed at the village from positions held by Military Detachment No. 1. When the Mission's observers returned to the village centre, they met María Carmela Martínez Barrero, age 13, who had been hit by a bullet in the lower left side of her abdomen, where it remained lodged. She was taken immediately in a Mission vehicle to Chalatenango hospital, where she was given all the first aid that her condition required. The hospital's doctors recommended that she should be operated on later in a San Salvador hospital.

133. Thanks to the investigations carried out on the spot, the Mission's observers managed to find the place from which the shot that hit the girl had been fired, a place where armed forces personnel had been posted. They were also able to establish that, at that time, FMLN forces were in the centre of the village. These observations were reported to Military Detachment No. 1, although, according to its commanders, there is no reliable evidence of its responsibility. According to the version given by the military authorities, the girl had been in a shop from which she had run out on hearing the shots, at which point she was hit by a projectile.

134. This case involves a violation, on the part of the armed forces, of the prohibition on disproportionate attacks, inasmuch as heavy artillery was fired at a populated area, when it was foreseeable that it would incidentally cause casualties among the civilian population or damage to civilian property, or both - as actually happened - which would be excessive in relation to the specific and direct military advantage that it was reasonable to anticipate. FMLN too in this case violated the rules governing precautions against the effects of attacks, inasmuch as its presence in the village centre was tantamount to the location of a military objective within the village. 42/

135. No. SORC/232: Franklin Menjivar Monje, age 18, residing in the Department of Chalatenango. Between 7 and 12 a.m. on 20 November 1991, in the village of Las Cañas in the Department of Chalatenango, while Franklin was working in the field with his father, a clash occurred between the army and FMLN forces, as a result of which Franklin was hit by a bullet.

136. On 21 November 1991, an ONUSAL team went to the place and observed that troops from Military Detachment No. 1 were stationed on the hill called "Francisco". Meanwhile, FMLN had taken up positions on the hill called "Molina" and in a house on the outskirts of Las Cañas. From the trajectory of the shot that hit him and from the position where Franklin was when he was wounded, it could be concluded that the shot had come from the positions held by the armed forces.

137. The Mission reported this fact to the military authorities, who admitted the clash but denied that the wound had been inflicted by "firearms". These authorities attributed the wound to splinters of metal and maintained that there was no way of determining responsibilities because both sides have the

same type of weapons. The Mission considers that this case constitutes an indiscriminate attack in which precautionary measures were not taken by the units of the armed forces.

138. No. SORC/212: Miguel Ramírez Alvarenga, age 45, residing in San Antonio los Ranchos, Department of Chalatenango. It was reported that at approximately 11 a.m. on 15 November 1991, six mortar shells landed near a field where several people were working. Ramírez was seriously wounded and had to have his left foot amputated. According to the complaint, fighting was not going on when the mortar shells were fired, although shots were later heard in the distance coming from the places known as "Gallinero" and "Los Llanitos".

139. ONUSAL made two visits to the scene of the incident, on 15 and 19 November, and was able to check that, on the first of these dates, artillery fire did come from the La Sierpe base in the city of Chalatenango, where there is an armed forces artillery battery. These shots were being fired in the direction of Las Mesas hill, where the victim was wounded. This information was confirmed when ONUSAL contacted Military Detachment No. 1, which reported that, on 15 November at the time of the incident, it had aimed artillery fire from La Sierpe at Los Almendros hill, which is adjacent to Las Mesas hill. At the military unit, the victim's wife was advised to file a complaint to the courts in order to determine responsibilities. On 17 December, a complaint was submitted to a justice of the peace. The complainant's statement and the testimony of the eyewitnesses to the incident are in the dossier which is now before a court of first instance in Chalatenango. The Mission deems this case to constitute an indiscriminate attack in which precautionary measures were not taken by the units of the armed forces.

140. No. SORC/225: Sonia Guadalupe Valle Torres, age 2 years and 6 months, residing in the Department of Chalatenango. At 6.30 a.m. on 18 November 1991, a clash occurred between forces of the Fourth Infantry Brigade, who were leaving La Reina via the El Calvario district, and FMLN forces stationed on the hill called "Tecomate" or "Conacaste". As a result of the fighting, Sonia Guadalupe Valle Torres, age 2, who at that moment was outside her house with her brother, was wounded by a bullet. According to the doctor's report, the girl had a wound on her right arm and burns on the right side of her thorax. On 21 November, an ONUSAL team went to the place and interviewed the doctor concerned. Their investigation leads to the conclusion that the shots came from the positions held by FMLN. This is based on the traces of the impacts, the girl's position and the deployment of the contending forces.

141. According to FMLN, its troops were 500 to 600 metres away from the victim and the armed forces soldiers were about 15 metres away. The girl was hidden by trees and there was no visibility from the place where the FMLN combatants were situated. In this case, a violation of the prohibition concerning indiscriminate attacks - attributable to the failure of FMLN to observe the requisite precautionary measures - has been verified.

Laying of mines

142. No. SORC/191: Martín Ortíz Mena, age 40, residing in the Department of Chalatenango. On 4 November 1991, while he was walking along the side of a sown field situated one hour from La Ceiba village in the Department of Chalatenango, Ortíz stepped on a mine which exploded, seriously wounding him. He later had to have his left foot amputated. The ONUSAL regional suboffice which investigated the case pointed out that it was necessary to enlist the cooperation of an expert skilled in this type of explosives, who might be able to discover another anti-personnel mine laid in the same area as a useful method for tracing the origin of the device which exploded in the above-mentioned circumstances. Although this case was discussed informally with both parties to the San José Agreement, the Mission is not in a position to assign responsibilities to either of them in particular, for the aforesaid reasons.

143. This case poses the problem of the laying of such devices with regard to the rules of international humanitarian law applicable to non-international armed conflicts. The general rules on the protection of the civilian population stipulate that mines, booby-traps, traps and other devices must not be used against the civilian population in general or against individual civilians, and also that these weapons must not be used indiscriminately, in other words, that precautionary rules also exist in this connection which constitute binding rules of conduct. 43/ In this connection, it is worth remembering that the obligations of conduct stipulated in some of the norms of the 1980 Convention, including the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), are part of the system of law relating to means of combat that is applicable in any armed conflict (internal or international). 44/

144. As regards this problem, note should be taken - among numerous similar pronouncements of the organ of the United Nations system - of the latest resolution of the Commission on Human Rights concerning the situation of human rights in El Salvador, which "Calls upon the parties to the conflict to guarantee respect for the humanitarian rules applicable to non-international armed conflicts such as that in El Salvador, particularly with regard to ... the non-use of explosive devices affecting the civilian population." 45/ It should also be borne in mind that the International Committee of the Red Cross (ICRC) has repeatedly reminded both the Government of El Salvador and FMLN, orally and in writing, that neither the civilian population nor goods indispensable to them should be the object of attacks, threats or reprisals. In addition, the ICRC has expressed its concern, on several occasions, at the consequences which the laying of mines by the contending parties in the internal armed conflict in El Salvador might have for the civilian population and individual civilians. 46/

C. War tax

145. During the period covered by this report, ONUSAL received various complaints against FMLN for levying the war tax. These complaints came from the coffee-growing areas of Santa Ana, San Salvador and Usulután. According to the complainants, the proximity of the harvest season made it likely that acts of intimidation would be carried out to ensure payment of the requested sums. Such allegations were not new, for ONUSAL had received earlier complaints from coffee growers who had been threatened with destruction of their crops if they refused to pay the so-called war tax. However, these threats were now being made on a scale rarely seen in earlier periods. Coffee growers' associations also denounced the threats publicly and urged ONUSAL to intervene.

146. The ONUSAL office in Santa Ana received many communications on this issue. Almost all the complainants said that they had received threats from FMLN that it would stop the coffee harvest if they did not pay the war tax. These threats had been made in writing and had been delivered to estates by armed individuals in civilian clothing driving vehicles. In some cases, these individuals had written political slogans on walls or put up posters with FMLN propaganda before driving away. The amounts of money demanded had ranged from 30,000 to 50,000 colones. These threats coincided with an anonymous phone call to the Santa Ana coffee-growers' association announcing that a bomb would go off in its offices. According to the complainants, such a threat is fairly unusual in the area. The complainants said that they feared for their lives and for the lives of their employees and their employees' families.

147. ONUSAL transmitted these complaints to the FMLN local command, which categorically denied responsibility and said that FMLN scrupulously follows the instructions issued by its General Command that it should refrain from such acts and any other acts contrary to the letter or the spirit of the Peace Agreement. When the Mission repeated such complaints, FMLN reiterated its denial on a number of occasions and said that the threats were probably being made by ordinary criminals who were using its name as a cover. ONUSAL suggested to the complainants that they file complaints with the competent authorities so that the threats could be investigated. Some of them sought the assistance of a security force. However, the Mission wishes to place on record that the impunity with which such threats seem to be made is increasing their victims' fears and feelings of vulnerability, to the point that they believe that filing complaints will only cause them further problems. Such a situation is, of course, regrettable.

148. The ONUSAL offices in San Salvador and Usulután likewise received complaints from coffee growers of similar threats by FMLN. Some complaints referred to FMLN reprisals in Usulután such as the destruction of coffee crops, the burning of a plantation and even the forcible involvement of peasants in such actions. The local FMLN command, when consulted by ONUSAL, acknowledged that the war tax is a compulsory contribution levied on wealthy people and a normal fund-raising method in an irregular war which has been

used since the beginning of the armed conflict. It added that, when persons approached for money refuse to cooperate, FMLN resorts to forcible action such as the destruction of crops. It should be mentioned, however, that these statements were made in relation to acts that occurred before the cease-fire went into effect. When confronted with complaints against FMLN for similar actions that have occurred this year in the Usulután area, the local command said that it had stopped levying the war tax and suggested that groups of criminals using the name of FMLN as a cover might be responsible.

149. Although, strictly speaking, these complaints do not fall within the sphere of competence of ONUSAL, the Mission has none the less received all of them and transmitted them to FMLN to find out whether they are true. When FMLN has denied the charges, the Mission has suggested to complainants that they make application to the competent organs. When FMLN has acknowledged the charges, the Mission has urged it not to engage in actions which might jeopardize the process of peace and national reconciliation and to refrain from violating rights to which the San José Agreement gives priority. In so doing, it has not only prevented such violations from occurring, but has also, in practice, made it difficult for FMLN to go on using such methods. It is likely that the cessation of the armed conflict will be accompanied by the virtual disappearance of the so-called war tax. However, there is already clear evidence that groups of criminals, using the name of FMLN, are trying to extort money from the population. The competent organs will have to take decisive action to prevent such groups from acting with impunity.

## V. CONCLUSIONS AND RECOMMENDATIONS

150. The prospect of a final cessation of the armed conflict as of 1 February and the informal cease-fire which went into effect on 15 January put the Human Rights Division in the situation originally envisaged by the San José Agreement for the performance of its mandate. Paragraph 19 of that Agreement in fact envisaged that the Mission would take up its duties as of the cessation of the armed conflict.

151. The determination of both parties to respect the cease-fire and their request for ONUSAL to monitor it, as well as the verification and supervision of the operations of the National Police until the new National Civil Police is deployed throughout the country, are important elements for facilitating the task of the Human Rights Division and for human rights verification, promotion and education. What is required in the overall context of progress towards lasting peace and institutional change, is to promote, through vigilant observation of the real situation, behavioural changes and legal reforms conducive to the essential spirit of reconciliation and, in the longer term, to the consolidation of the rule of law and unrestricted respect for and the safeguarding of human rights.

152. The period covered by this report saw a significant decline in the fighting, particularly after the unilateral truce declaration by FMLN on

16 November 1991 and the positive response by the President of the Republic in deciding to suspend the use of the aircraft and heavy artillery. In some areas, however, particularly Chalatenango, fighting continued for several more weeks. During the same period, a number of incidents caused the Mission considerable concern: an increase in the number of summary executions or deaths, many of them attributable to unidentified organized groups, particularly in the San Salvador area and in the Departments of La Libertad and Santa Ana; death threats, also by organized groups, against members of non-governmental organizations or churches; and the attack on the vehicle of a foreign press correspondent at the precise moment when the New York Act was being signed.

153. Military recruitment, which had declined in the final days of 1991, was particularly intense in certain regions of the country in the first two weeks of January 1992. The undertaking signed by the Government to suspend all recruitment as of 1 February and to present a bill on military service within 60 days should put an end to the difficulties caused by this problem to which the Mission has been drawing attention from the outset. Freedom of movement has also improved considerably in recent weeks, particularly in the conflict zones of Morazán and Chalatenango, and this situation should continue to improve after 1 February until it is completely normalized.

## A. Human rights

### 1. Right to life and to integrity and security of person

#### (a) Summary executions or deaths in violation of juridical guarantees

154. During the period covered by this report, a considerable number of violations of the right to life occurred in the country, particularly in the regions of San Salvador and Santa Ana. The cases considered in the report show that the auxiliary organs of the system of justice, and often judges themselves, have not taken all necessary steps to comply with the recommendations made to States by the General Assembly concerning the prevention and investigation of summary executions, particularly in the Principles endorsed by the General Assembly in its resolution 44/162. In most cases, the action taken to collect evidence and to find, identify and arrest the alleged perpetrators in order to bring them to justice has been inadequate and at times even non-existent.

155. If the current sense of impunity is to be overcome and conditions are to be created for the genuine public security that is particularly necessary in the transitional period now beginning, the duty to protect or safeguard the fundamental right to life and to integrity of person must be observed. In this connection, ONUSAL feels bound to reiterate the recommendations made in its second report (para. 150).

(b) Death threats

156. The death threats dealt with in this report are equally disturbing. Many of them were directed at leaders and members of non-governmental organizations, trade unions or churches. Some organized but anonymous groups, which became active before ONUSAL arrived and have remained so since, continue to make death threats and yet the alleged authors have so far been neither identified, investigated nor brought to trial. The actions of such groups were mentioned in the Mission's second report, which recommended that vigorous action should be taken to put an end to the practices of intimidation and threats by clandestine groups.

157. In this connection, the Mission emphatically reiterates its recommendation to the authorities that they should take all necessary steps to provide effective protection to persons who receive such threats, as recommended in Principle 4 already mentioned.

(c) Torture and cruel, inhuman or degrading treatment or punishment

158. A number of cases of torture or cruel, inhuman or degrading treatment or punishment have been described in this report. ONUSAL considers it important and encouraging that the military authorities have imposed administrative penalties on the perpetrators. However, it must emphasize that such abuses are crimes, and it therefore recommends that the public authorities institute legal proceedings, wherever necessary, in accordance with domestic law and the international norms referred to in the corresponding section. It also reiterates its recommendation that the periods of administrative detention provided for in domestic law should be respected and that incommunicado detention, which is prohibited by the San José Agreement, should be prevented.

159. Lastly, the Mission recommends that in setting up the new National Civil Police provided for in the Peace Agreement, account should be taken of the provisions of the General Assembly Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, to ensure that future members of the police are given appropriate training emphasizing that such practices are absolutely prohibited.

2. Right to due process of law

160. The Mission has continued to monitor due process of law, to which the San José Agreement gives priority, by observing the pre-trial or adversarial proceedings of trials now in progress. In this connection, it feels bound to recommend, first of all, strict respect for domestic law on the collection of evidence: in cases of violent or suspicious deaths, the judge must make an immediate visual inspection, the body must be examined and, wherever possible, a thorough autopsy must be performed. The recommendations to States contained in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162, should also be borne in mind.

161. Concerning the proceedings brought in the El Mozote case, which are very important for institutional reasons, the Mission reiterates the comments made in analysing the current status of the pre-trial proceedings, especially those relating to the need to use systematic anthropological techniques to study skeletal remains and the need to request assistance from international experts in forensic anthropology so that they can be there to supervise the exhumation and laboratory analyses, along with local professionals.

162. Concerning the conduct of the public hearing, which is the main part of the trial stage of the proceedings under El Salvador's present system of criminal justice, the Mission wishes to refer to the comments made in the corresponding section. In particular, it recommends strict compliance with the procedural rules requiring that the summary be read out clearly and that the judge observe the obligation to ask members of the jury whether they wish to question the accused or the witnesses.

### 3. Right to personal liberty

#### (a) Arrest of juveniles

163. This problem was examined during the period covered by this report in the light of applicable national and international norms. The Mission has observed such practices as illegal or arbitrary arrests, omissions or delays by the authorities in handing over minors to the juvenile courts and failure to observe the requirement that juveniles and adults be confined separately in prisons and detention centres. The authorities seem to be aware of the seriousness of these problems, which are attributable in part to limited human and material resources. However, as the report indicates, such constraints are not sufficient to justify failure to comply with binding rules.

164. The Mission wishes to recommend increased supervision of police officers and juvenile reform centres and improved staff training in order to ensure full respect for the human rights of juveniles in custody or detention.

#### (b) Arrests by military personnel

165. During the period covered by this report, the Mission found that the armed forces frequently make arrests in cases not involving in flagrante delicto, generally on mere suspicion of belonging to subversive groups, and usually hold detainees for varying periods of time. By law, the armed forces may make arrests only in cases of in flagrante delicto and must hand over detainees immediately to an auxiliary organ of justice. Since such arrests are illegal and violate the San José Agreement and domestic and international law, the Mission recommends that the armed forces refrain from such practices in future. It is its expectation that these practices will disappear in the period now beginning, since they were directly related to the armed conflict.

### 4. Freedom of movement

166. This report analyses the situation of freedom of movement from when the Mission was established on 26 July 1991 to 31 January of this year. The corresponding section emphasizes the complexity of verifying the right to movement of persons and goods in a situation of internal armed conflict. It also draws attention to the applicable legal norms and legally acceptable restrictions. Freedom of movement, particularly to and from conflict zones, was severely restricted in the early months of the period analysed. Later on, around mid-November, it was noted that both sides were beginning to make efforts to each such restrictions, although these efforts were not uniform and there were a number of exceptions. Lastly, as of 16 January of this year, a number of checkpoints have been removed, others have been dismantled and still others, although manned by soldiers, do not actually check vehicles.

167. The Mission welcomes the fact that restrictions on the movement of civilians and civilian goods have been eased and thinks they should soon disappear altogether given the situation now prevailing in the country. Its field observations show this to be the trend at present.

### 5. Personal documentation

168. The Mission welcomes the initiative taken by the Central Board of Elections in providing a town hall with photocopies of the registers of births, deaths and marriages and reiterates the suggestion made in its previous report that this measure should be implemented nation-wide. At the same time, the Mission reiterates its recommendation that the special law to establish the civil status of undocumented persons affected by the conflict should be submitted to the Legislative Assembly as soon as possible and that it should include provisions making it easier to obtain personal identity cards.

### 6. Freedom of association

169. This report considers the legal framework, under domestic and international law, for the freedom of association guaranteed by the San José Agreement (paras. 5 and 11), and specifies the conditions in which ONUSAL will fulfil its mandate in this connection. The Mission has received various reports of irregularities in the exercise of trade union freedom. While it seems premature to draw conclusions from the information received so far, ONUSAL will continue to investigate this problem and will make a more detailed analysis of it in a subsequent report.

## B. Humanitarian law

### 1. Humane treatment

170. The entry into effect of the cease-fire should mark the end of consideration by the Human Rights Division of situations such as those described in paragraphs 110 and 116, which should be seen as a thing of the past. The Mission feels bound to recall that, in the case of a non-international armed conflict, persons who do not take a direct part or who have ceased to take part in hostilities are protected by the Geneva Conventions of 12 August 1949 and by Additional Protocol II thereto. The wounded and sick are entitled to immediate protection and care. Failure to observe this rule of conduct is a serious violation of the norms of international humanitarian law. Furthermore, while international humanitarian law allows insurgent forces to engage in summary executions, it imposes a number of minimum mandatory requirements: existence of a court offering the essential guarantees of independence and impartiality, respect for the principle of legality, procedural guarantees and, in particular, the right of defence both before and during trial. ONUSAL hopes that, in future reports, its recommendations on respect for humane treatment will no longer be necessary.

### 2. Civilian population

171. The consideration given to indiscriminate attacks in this report should not be necessary in future. However, it should be emphasized that in the cases mentioned in the corresponding section, the armed forces did not take the necessary precautions in their attacks, nor did they attempt to establish responsibility for incidents the investigation of which required that disciplinary or criminal proceedings should have been brought. FMLN, for its part, violated established norms on the precautions to be taken against the effects of attacks, as indicated in the corresponding section.

172. It has not been possible to determine responsibility for the injuries caused to a civilian as a result of the explosion of a mine. It should be recalled in this connection that mines must not be used indiscriminately, a requirement established by the norms of international humanitarian law applicable to non-international armed conflicts mentioned in discussing this case in the corresponding section.

### 3. War tax

173. It is very likely that the cessation of the armed conflict will be accompanied by the virtual disappearance of this problem. Although the Mission has taken the position that complaints relating to this issue are, strictly speaking, outside its mandate, it has in all cases received them and transmitted them to FMLN to find out whether they are true. When FMLN has

denied the charges, the Mission has advised complainants to make application to the competent State organs, since there is clear evidence that criminal groups, using the name of FMLN, are engaging in extortion. In cases where FMLN has acknowledged responsibility, the Mission has called on it to avoid any action which might jeopardize the process of peace and national reconciliation and to refrain from violating rights to which the San José Agreement gives priority, which could occur in the course of levying the so-called war tax.

174. Lastly, the Mission believes that its main course of action in dealing with the parties is to make recommendations on the basis of the conclusions drawn from cases or situations which it has considered (San José Agreement, para. 14 (g)). The parties, in turn, have undertaken to give their earliest consideration to recommendations made by the Mission (San José Agreement, para. 15 (d)). Accordingly, on 7 January last, the Mission sent notes to both the Government of El Salvador and FMLN asking each of them to kindly let it know what consideration is being given to the recommendations made in its second report (paras. 146 ff.). The notes included a recapitulation of those recommendations.

175. A new era is beginning for El Salvador, filled with hopes and misgivings. The end of the armed conflict should ensure that the State and FMLN, as long as they remain parties to the San José Agreement, will devote themselves more fully to respect for and the protection of human rights. A number of problems which have been of concern to the Mission ever since its establishment should be substantially resolved or disappear: restrictions on freedom of movement, military recruitment and violations of international humanitarian law.

176. However, violations of fundamental human rights are still extremely prevalent. Not only is the number of such violations cause for concern, but also the nature of some of those which have occurred frequently in recent weeks. These include summary executions and death threats by organized groups. It is also disturbing that State organs, including the judicial system and its auxiliary bodies, remain incapable of preventing, investigating and punishing violations of fundamental human rights. Other consequences of the conflict, such as problems relating to the lack of personal documentation, also persist.

177. Because of all this, the Mission will have to remain vigilant in verifying the human rights situation in El Salvador. It will have to make a greater effort to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law (San José Agreement, para. 14 (h)). The Mission will also step up its activities in the area of human rights education, publicity and promotion in order to help restore the climate of harmony essential to respect for all the agreements signed.

Notes

1/ This principle was established early on, in respect of civil-war situations by a significant precedent, the arbitral award issued on 1 May 1925 by Professor Max Huber in the case of British claims for injuries to British subjects in the Spanish zone of Morocco (Recueil de sentences arbitrales, published by the United Nations, vol. II, pp. 615-742; see, in particular, p. 645).

2/ Annual Report of the Inter-American Court of Human Rights, 1988. OAS/Ser.L/V/III.19, doc. 13, 31 August 1988, General Secretariat, Organization of American States, appendix VI. Inter-American Court of Human Rights, "Velásquez Rodríguez case", judgement of 29 July 1988, para. 166. The Court also established in that case that "(...) An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention [American Convention on Human Rights]" (para. 172).

3/ See the judgement cited in note 2, para. 177, where the Court adds the following: "(The duty to investigate) must (...) be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane".

4/ See, in particular, General Assembly resolution 45/172 of 18 December 1990, the most recent resolution on the situation of human rights and fundamental freedoms in El Salvador; in paragraph 8, the Assembly "Also expresses its deep concern that the capacity of the judicial system continues to be unsatisfactory, as a result of which the competent authorities must accelerate the adoption of the reforms and measures necessary for ensuring the effectiveness of the system". See also Commission on Human Rights resolution 1991/75 of 6 March 1991, para. 6, the most recent resolution adopted by the Commission on the situation of human rights in El Salvador.

5/ See Economic and Social Council resolution 1989/65 of 24 May 1989, annex.

6/ "Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions" in Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs, United Nations, New York, 1991, p. 15 ff.

Notes (continued)

7/ Constitution of the Republic of El Salvador, art. 241. Penal Code, art. 476.

8/ Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979. Article 5, commentary (c).

9/ See Principle 6. "No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment." "*The term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time."

10/ Art. 428 of the Penal Code of El Salvador punishes as abuses of authority a series of arbitrary acts regarded as crimes against the civilian administration, including the use of torture, violence or unnecessary maltreatment during detention.

11/ Penal Code (art. 476), Code of Criminal Procedure (art. 131).

12/ See Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Progress report submitted by Mr. Theo van Boven, Special Rapporteur. Document E/CN.4/Sub.2/1991/7 of 25 July 1991.

13/ "Model Protocol for Disinterment and Analysis of Skeletal Remains", in the Manual cited in note 6, p. 34 ff.

14/ "Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions, 4. Personal testimony", in the Manual cited in note 6, p. 18.

15/ Code of Criminal Procedure, art. 350.

16/ Ibid., art. 115.

17/ See The right to a fair trial, a brief report prepared by Mr. Stanislav Chernichenko and Mr. William Treat in accordance with resolution 1989/27 of the Sub-Commission. Document E/CN.4/Sub.2/1990/34 of 6 June 1990, para. 37.

18/ Code of Criminal Procedure, art. 349.

Notes (continued)

19/ See The administration of justice and the human rights of detainees: study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Final report by the Special Rapporteur, Mr. L. M. Singhvi. Document E/CN.4/Sub.2/1985/18/Add.5. 31 July 1985. Jury Consideration and Deliberations.

20/ The Penal Code of El Salvador establishes criminal responsibility as from 16 years of age (art. 16).

21/ Juvenile Code, art. 67.

22/ International Covenant on Civil and Political Rights, art. 10, 2 (b); Convention on the Rights of the Child, art. 37 (c); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990, rule 29; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the General Assembly in its resolution 40/33 of 29 November 1985, rule 13.4; Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its resolutions 663 (C) (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 8 (d); American Convention on Human Rights, art. 5 (5).

23/ Information received from Governments in Report of the Secretary-General on the application of international standards concerning the human rights of detained juveniles prepared pursuant to Sub-Commission resolution 1989/31, document E/CN.4/Sub.2/1990/25/Add.2 of 13 August 1990, B. El Salvador, p. 6. In its reply to the questionnaire on the application of such standards, the Government of El Salvador answered that "(...) There are no facilities for holding juveniles in police cells".

24/ See Human Rights Committee, General Comment 9 (16), 1982 report, p. 97, para. 6, which states, with regard to art. 10 of the International Covenant on Civil and Political Rights: "Subparagraph 2 (b) of the article calls, inter alia, for accused juvenile persons to be separated from adults ... [A] number of States are not taking sufficient account of the fact that this is an unconditional requirement of the Covenant. It is the Committee's opinion that, as is clear from the text of the Covenant, deviation from States parties' obligations under subparagraph 2 (b) cannot be justified by any consideration whatsoever".

25/ Constitution of the Republic of El Salvador (see, in particular, art. 36, which provides: "Juvenile delinquency shall be subject to a special legal system").

Notes (continued)

26/ With regard to interrogations, the Body of Principles cited in note 9 provides as follows: "Principle 23.1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law. 2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle."

27/ See, in particular, the United Nations International Covenant on Civil and Political Rights (art. 12), which embodies it more broadly.

28/ Concerning the prohibition on collective punishment, see Additional Protocol II, art. 4 (2) (b). Concerning the implications of that prohibition, see International Committee of the Red Cross (ICRC), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Martinus Nijhoff Publishers, Geneva, 1987, para. 4536. Concerning the prohibition on reprisals, see General Assembly resolution 2675 (XXV) of 9 December 1970 on "Basic principles for the protection of civilian populations in armed conflicts", para. 7. On occasion, restrictions on freedom of movement could cause the civilian population to suffer undue hardship owing to a lack of essential supplies, as referred to in art. 18 (2) of Additional Protocol II.

29/ Constitution of the Republic of El Salvador, art. 5.

30/ Constitution of the Republic of El Salvador (art. 7). International Covenant on Civil and Political Rights (art. 22). International Covenant on Economic, Social and Cultural Rights (art. 8). American Convention on Human Rights (art. 16). Labour Code (art. 204). Electoral Code (art. 101 ff.). Act establishing the Salvadorian Institute for Cooperative Development (art. 1).

31/ Civil Code (art. 540).

32/ See note 30.

33/ See International Committee of the Red Cross op. cit., para. 4597 and footnote 30. M. Both, K. J. Partsch and W. A. Solf, New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949, Martinus Nijhoff Publishers, The Hague/Boston/ London, 1982, p. 651, para. 2 (5). R. Abi-Saab, Droit Humanitaire et Conflits Internes. Origines et évolution de la réglementation internationale, Institut Henry-Dunant, Geneva, 1986, p. 170, footnote 129.

Notes (continued)

34/ Principle 2 provides as follows: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

35/ This document comprises an initial, introductory part, dated September 1991. A second part is entitled "Normativos reguladores de la conducta de la fuerza militar del FMLN y de los procedimientos para la administración de justicia en las zonas de control". A third part is entitled "Medidas para proteger los derechos humanos de la población civil en el contexto de la guerra". The fourth and final part is entitled "Normas para promover una conducta de respeto a los prisioneros de guerra y disposiciones especiales respecto a los espías al servicio de la FAES".

36/ See ICRC, op. cit. (note 33), para. 4602, which states: "The right to be heard, and, if necessary, the right to call on the services of an interpreter, the right to call witnesses for the defence and produce evidence; these constitute the essential rights and means of defence".

37/ With regard to international guidelines, see the "Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions" and the "Model Autopsy Protocol" in Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, United Nations, New York, 1991.

38/ See "Declaration on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts" issued by the Council of the International Institute of Humanitarian Law at Taormina on 7 April 1990, published in the International Review of the Red Cross, No. 278, September-October 1990, p. 404 ff. The first rule formulated by the Declaration is as follows: "1. Distinction between combatants and civilians. The obligation to distinguish between combatants and civilians is a general rule applicable in non-international armed conflicts. It prohibits indiscriminate attacks." Indiscriminate attacks are defined in Additional Protocol I (art. 51), to which reference can be made, by analogy, for the interpretation of Additional Protocol II.

39/ See the Declaration cited in note 38, "8. Precautionary measures in attack. The general rule to distinguish between combatants and civilians and the prohibition of attacks against the civilian population as such or against individual civilians implies, in order to be effective, that all feasible precautions have to be taken to avoid injury, loss or damage to the civilian population."

Notes (continued)

40/ This principle provides as follows: "In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war, and all necessary precautions should be taken to avoid injury, loss or damage to civilian populations."

41/ See "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts" in International Review of the Red Cross, No. 278, September-October 1990, p. 404.

42/ See, by analogy, Additional Protocol I, art. 58 (b), which prohibits the location of military objectives within or near densely populated areas. This has been understood to refer to both fixed and mobile objectives. The latter consist of troops, equipment and means of transport in densely populated areas. See, on this item, International Committee of the Red Cross, Commentary ..., cited in notes 28 and 33, paras. 2251 and 2252. This question is further linked to the prohibition on using the population as a "shield" (Additional Protocol I, art. 51 (7)), as noted in the above-mentioned ICRC Commentary ... (para. 1987).

43/ See the Declaration cited in note 38: "B. Prohibitions and restrictions on the use of certain weapons in non-international armed conflicts. 4. Mines, booby-traps and other devices". The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980, and its annexed protocols - including Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices - are applicable only in international armed conflicts. However, as stated in the following paragraph of the text with reference to doctrine, their principles have been deemed to constitute general international law applicable in non-international armed conflicts. See, in particular, the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) and the prohibition on the indiscriminate use of such weapons laid down in article 3 thereof.

44/ See Denise Plattner, "The 1980 Convention on Conventional Weapons and the applicability of rules governing means of combat in a non-international armed conflict", in International Review of the Red Cross, No. 279, November-December 1990, p. 551 ff.

45/ Commission on Human Rights resolution 1991/75 of 6 March 1991 concerning the situation of human rights in El Salvador, para. 9.

46/ ICRC, Reports of Activities: 1985, p. 36; 1986, p. 37; 1987, p. 40; 1988, p. 43; 1989, p. 41.

APPENDIX I

Explanatory note

Percentage of complaints by region

| Location | November | December |
|---|---|---|
| San Salvador Regional Office | 27.70 | 27.84 |
| Santa Ana Regional Office | 11.55 | 27.84 |
| San Miguel Regional Office | 9.77 | 10.57 |
| San Vicente Regional Office | 22.38 | 10.98 |
| Usulután Regional Suboffice | 17.05 | 14.23 |
| Chalatenango Regional Suboffice | 11.55 | 8.54 |

Remarks

1. As pointed out above, the figures given in the tables simply reflect the number of complaints received and should not be construed as affirmation by ONUSAL that the allegations made are true. The purpose of the tables is simply to show the number of complaints received in each period and the relevant category of possible violations of the San José Agreement into which they fall. The figures given include the various complaints submitted to ONUSAL by different sectors of Salvadorian society and, of course, by those actually concerned. Whether a complaint is true can be confirmed by ONUSAL only after a verification procedure undertaken by the Mission's human rights teams. The results of such procedures are given in the sections on cases relating to human rights and humanitarian law, where an analysis is made of complaints or situations in respect of which, because of their gravity or importance, recommendations have to be made to the party responsible in order to prevent such situations from recurring in the future.

Analysis of statistics for the period from November to December 1991

2. The statistics accompanying this report show that the situation regarding complaints is broadly similar to that detailed in the second report (A/46/658-S/23222 and Corr.1). However, a gradual decline can be noted in the number of complaints over the period from October to December (the December figure was 12.61 per cent lower than the November figure, which in turn was 10.06 per cent lower than that for October). This trend may have been influenced by developments in the overall situation in the country in connection with the evolution of the peace process, a factor which has a

bearing on the categories of the report relating to alleged violations of international humanitarian law (decline in complaints concerning acts or threats of violence and indiscriminate attacks). One of the categories where the number of complaints has fallen is that of torture and cruel, inhuman or degrading treatment or punishment. Although this is a positive trend, it should be pointed out that the complaints in question generally refer to cases of ill-treatment during detention, a practice which, despite the gradual decline recorded, is still a source of concern to the Mission, since it is something which should be eradicated in the new era which El Salvador is entering.

3. The statistics show that a total of 23 complaints concerning abductions were received in the period from November to December, a figure slightly lower than that in the second ONUSAL report. In this connection, it should be pointed out that, once most of the complaints had been verified, a significant number proved not to have entailed violations of personal liberty, because the event described either had not occurred or had not had the implications attributed to it in the complaint. ONUSAL was disturbed to find that on verification although some of the cases bore the hallmarks of abductions, they were actually common crimes. In such cases, ONUSAL has urged the complainants to take the matter up with the appropriate authorities, although unfortunately they have failed to do so. A small number of other complaints concerned the holding of persons in connection with forcible demands for money, accusations which have been denied by FMLN, the alleged culprit. ONUSAL is still investigating a number of these complaints with a view to compiling evidence to verify their accuracy.

4. One of the categories for which a large number of complaints was received was disappearances. These are cases where the families have lost contact with those concerned or do not know their current whereabouts, although there is no evidence that they have been arrested. Responsibility for cases in this category is not being attributed to either of the signatories to the San José Agreement. The cases are being investigated because the Mission is concerned that, on verification, some of them may involve a violation of the provisions of the Agreement. Usually, it is quickly established that the cases involve irregular recruitment procedures, arrests not notified to families, or simply situations falling outside the Missions's mandate.

5. Lastly, there was a disturbing increase during December in the number of complaints of summary executions, especially those attributed to persons unknown. These cases occurred mainly in San Salvador, San Vicente and Santa Ana. The same was true of death threats, where the accusations made against the self-styled Salvadorian Anti-Communist Front, persons unknown and members of the armed forces are a matter for concern.

Table 1. Complaints received by ONUSAL a/

| Category | November | December | Total |
|---|---|---|---|
| Summary executions | | | |
| Attributed to members or former members of the armed forces | 4 | 3 | 7 |
| By persons unknown | 6 | 23 | 29 |
| Death threats | | | |
| Attributed to members of the armed forces | 10 | 14 | 24 |
| Attributed to the Salvadorian Anti-Communist Front | 1 | 5 | 6 |
| By persons unknown | 3 | 8 | 11 |
| Enforced or involuntary disappearances | | | |
| Enforced disappearances | 1 | 1 | 2 |
| Disappearances (location unknown) | 21 | 30 | 51 |
| Abductions attributed to FMLN | 14 | 9 | 23 |
| Torture and cruel, inhuman or degrading treatment or punishment | 21 | 20 | 41 |
| Violations of integrity of the person | | | |
| Injuries attributed to the armed forces | 13 | 16 | 29 |
| Acts or threats of violence | 15 | 31 | 46 |
| Violations of personal liberty | | | |
| Illegal or arbitrary detention b/ | 112 | 84 | 196 |
| Restrictions on freedom of movement | 11 | 7 | 18 |
| Violations of due process of law | 15 | 24 | 39 |
| Illegal searches | 2 | 1 | 3 |
| Violations of freedom of association | 3 | 2 | 5 |
| Violations of freedom of expression | 1 | 3 | 4 |
| Humane treatment | | | |
| Attacks on the life of persons attributed to the armed forces | 7 | 3 | 10 |
| Attacks on the life of persons attributed to FMLN | 1 | 7 | 8 |
| Attacks by persons unknown | 5 | 2 | 7 |
| Death threats attributed to FMLN | 4 | 8 | 12 |

Table 1 (continued)

| Category | November | December | Total |
|---|---|---|---|
| Indiscriminate attacks | | | |
| Attributed to the armed forces | 3 | 11 | 14 |
| Attributed to FMLN | 7 | 4 | 11 |
| Unattributable | - | 2 | 2 |
| Acts or threats of violence the primary purpose of which is to intimidate the civilian population | | | |
| Attributed to the armed forces | 49 | 15 | 64 |
| Attributed to FMLN | 36 | 26 | 62 |
| Other situations | | | |
| Recruitment by the armed forces (minors) | 38 | 10 | 48 |
| Recruitment by the armed forces (adults eligible for military service) | 96 | 21 | 117 |
| Recruitment by FMLN (minors) | 6 | - | 6 |
| Recruitment by FMLN (adults) | 5 | 3 | 8 |
| Other cases c/ | 74 | 119 | 193 |
| Total | 563 | 492 | 1 055 |

a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ This figure includes the 41 cases of torture and cruel, inhuman or degrading treatment or punishment.

c/ The category "Other cases" includes doubtful cases and those not falling within the Mission's verification mandate.

## APPENDIX II

### Statistics from Government sources

Table 1. Complaints received by the governmental Human Rights Commission, 1991

| Category | October | November | December | Total |
|---|---|---|---|---|
| Threats | 6 | 3 | 8 | 17 |
| Injuries | 1 | 4 | - | 5 |
| Rapes | 2 | - | - | 2 |
| Disappearances | 25 | 22 | 12 | 59 |
| Arrests | 3 | 4 | 2 | 9 |
| Abductions by FMLN | 1 | - | - | 1 |
| Murders | 1 | 1 | 2 | 4 |
| Other | - | 1 | - | 1 |
| Total | 39 | 35 | 24 | 98 |

Source: Human Rights Commission.

Table 2. Deaths and injuries as a result of the violence in El Salvador, 1991

| Category | October | | November | | December | | Total |
|---|---|---|---|---|---|---|---|
| | Deaths | Injuries | Deaths | Injuries | Deaths | Injuries | |
| Civilian population as a result of terrorist acts | 3 | 2 | 4 | 15 | 1 | 4 | 29 |
| Civilian population attributed to members of the armed forces | 3 | 6 | 2 | 4 | 5 | 13 | 33 |
| Civilian population as a result of actions by unidentified persons | 19 | 10 | 20 | 30 | 15 | 16 | 110 |
| Civilian population as a result of clashes between the armed forces and FMLN | 1 | 3 | - | 11 | 1 | 10 | 26 |
| Off-duty military personnel as a result of terrorist acts | - | - | - | - | - | - | - |
| Total | 26 | 21 | 26 | 60 | 22 | 43 | 198 |

Source: Human Rights Commission.

Table 3. Statistics from from the Human Rights Office of the Armed Forces General Staff

Violations of human rights by FMLN

| Category | October | November | December | Total |
|---|---|---|---|---|
| Murders of civilians | 2 | 2 | - | 4 |
| Persons injured or maimed | 6 | 11 | 8 | 25 |
| Attacks on the civilian population | 31 | 13 | 18 | 62 |
| Abductions of civilians | 13 | 9 | 4 | 26 |
| Acts of violence or threats against civilians | 4 | 2 | 3 | 9 |
| Forcible recruitment of children under 15 | - | - | - | - |
| Persons killed by mines | 4 | - | 2 | 6 |
| Persons killed during attacks | - | - | 2 | 2 |
| Persons maimed or injured by mines | 2 | - | 1 | 3 |
| Rapes | - | - | 4 | 4 |
| Attacks on property | - | 2 | - | 2 |
| Unlawful seizures of land | - | - | 1 | 1 |
| War taxes | - | - | 5 | 5 |
| Total | 62 | 39 | 48 | 149 |

Source: "Statistical information on human rights violations for the months of October, November and December 1991", Human Rights Office of the Armed Forces General Staff.

## APPENDIX III

### Statistics from non-governmental sources

Table 1. Statistics from the Legal Protection Office of the Archdiocese of San Salvador

| Category | October | November | December | Total |
|---|---|---|---|---|
| Persons arrested | 6 | 10 | 4 | 20 |
| Persons arrested and disappeared | - | - | - | - |
| Persons disappeared | - | 4 | - | 4 |
| Persons arrested and later released | 6 | 8 | - | 14 |
| Persons abducted by FMLN | - | - | - | - |
| Prisoners of war held by FMLN | - | - | - | - |
| Forcible recruitment by FMLN | 1 | 1 | - | 2 |
| Deaths attributed to death squads | 6 | 8 | - | 14 |
| Deaths attributed to the armed forces | 6 | 2 | - | 8 |
| Deaths caused by explosive devices, responsibility unknown | 3 | - | - | 3 |
| Deaths caused by explosive devices, attributed to the armed forces | 2 | - | - | 2 |
| Deaths caused by explosive devices, attributed to FMLN | - | - | - | - |
| Deaths occurring during cross-fire, responsibility unknown | - | 1 | - | 1 |
| Deaths occurring during cross-fire, attributed to the armed forces | - | - | - | - |
| Deaths occurring during cross-fire, attributed to FMLN | 1 | 1 | - | 2 |

Table 1 (continued)

| Category | October | November | December | Total |
|---|---|---|---|---|
| Deaths occurring during army operations (civilians and combatants) | 7 | - | 1 | 8 |
| Deaths occurring during clashes, ambushes or army patrols (civilians and combatants) | 44 | 33 | 4 | 81 |
| Murders attributed to FMLN | - | - | - | - |
| Army and security force casualties | 41 | 40 | 7 | 88 |
| Total | 123 | 108 | 16 | 247 |

Source: Legal Protection Office of the Archdiocese of San Salvador.

Table 2. Statistics from the Human Rights Commission of El Salvador (non-governmental)

| Category | October | November | December | Total |
|---|---|---|---|---|
| Arrests by the armed forces | 47 | 12 | 18 | 77 |
| Arrests by FMLN | 2 | - | 1 | 3 |
| Disappearances attributed to the armed forces | - | - | 1 | 1 |
| Disappearances attributed to FMLN | - | - | - | - |
| Unattributable disappearances | 5 a/ | 3 | 2 | 10 |
| Disappearances attributed to unidentified persons | 1 | 1 | - | 2 |
| Deaths attributed to the armed forces | 24 | 17 | 22 | 63 |
| Deaths attributed to FMLN | 3 | 1 | - | 4 |
| Deaths caused by unidentified persons b/ | 13 | - | 1 | 14 |
| Unattributable deaths | 3 c/ | 2 | 3 | 8 |
| Total | 98 | 36 | 48 | 182 |

Source: Human Rights Commission of El Salvador.

a/ Cases of persons who disappeared while travelling between their home and place of work or study and did not reach their destination.

b/ Heavily armed unidentified civilians acting with the direct or indirect protection of the State.

c/ Victims of explosive devices and/or cross-fire where responsibility cannot be attributed to either of the parties to the conflict.

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